

No. 12175

United States
Court of Appeals
for the Ninth Circuit

IN RE J. ROBERT PATTERSON;
J. ROBERT PATTERSON,
Appellant,
vs.

THE STANDING COMMITTEE ON DISCIPLINE TO THE BAR OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Oregon

FILED

MAR 28 1949

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

B. A. GREEN AND GREEN AND LANDYE,
1003 Corbett Building,
Portland, Oregon,
For Appellant.

HENRY L. HESS,
United States Attorney,

EDWARD B. TWINING,
Assistant United States Attorney,
United States Court House,
Portland, Oregon, and

JAMES C. DEZENDORF,
representing the Standing Committee on Discipline to the bar of this Court,
Pacific Building, Portland, Oregon,
Appearing on behalf of this Court.

In the District Court of the United States
For the District of Oregon

No. D-3

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. ROBERT PATTERSON,

Defendant.

FIRST AMENDED COMPLAINT IN
DISCIPLINARY PROCEEDINGS

To the Honorable James Alger Fee and Claude
McColloch, Judges of The District Court of the
United States, for the District of Oregon:

The First Amended Complaint of David Lloyd
Davies, Samuel H. Martin, R. A. Leedy and James
C. Dezendorf respectfully alleges and shows:

I.

This First Amended Complaint is made by David
Lloyd Davies, Samuel H. Martin, R. A. Leedy and
James C. Dezendorf as the Standing Committee
on Discipline to the Bar of this Court.

II.

That J. Robert Patterson, who resides at Mil-
waukie, Clackamas County, Oregon, at all times
hereinafter mentioned has been an attorney at
law, duly licensed to practice before this court,
and a duly appointed and acting Assistant United
States Attorney.

III.

That J. Robert Patterson has been guilty of misconduct in the following particulars:

(a) That on October 8, 1945, he filed a complaint in this court on behalf of Marvin L. Hughes, Plaintiff, vs. Alaska Steamship Company, a corporation, Defendant, Civil No. 2923, and thereafter prosecuted said cause to a conclusion, although he well knew that one of the principal defenses that would be urged by the Defendant was that the Plaintiff's claim, if any, should be asserted against the United States of America, whom he was not in a position to sue because of his office as Assistant United States Attorney.

(b) That on or about the 30th day of August, 1946, he accepted employment by one Westley Bowden, who was charged in the Circuit Court of the State of Oregon, for Multnomah County, with the crime of murder, and he represented said Westley Bowden at the trial and accepted a fee therefor although he expected to be called as a witness at the trial of said Westley Bowden and although the Attorney General's manual governing the conduct of United States Attorneys directs that United States Attorneys shall not represent a person charged with a crime in a State Court.

(c) That on or about February 12, 1947, he offered to represent one Joseph Martin for a fee in connection with proceedings to procure the release of certain wages earned by the said Joseph

Martin which were deposited in the registry of the United States District Court at San Francisco, California, although said Joseph Martin was referred to him in his capacity as Assistant United States Attorney and such matters are customarily handled by United States Attorneys without compensation therefor.

(d) That on December 7, 1945, and on January 4, 1946, he appeared in this court as Assistant United States Attorney, representing the United States of America in two criminal proceedings brought by the said United States of America against Eugene Russell Costello, being numbers 16714 and 16715, although he was then associated in the practice of law with Milton R. Klepper, who appeared in said proceedings representing the said Eugene Russell Costello, the Defendant therein.

(e) That commencing on or about October 2, 1946, he represented that he was and held himself out as practicing law as a member of a partnership composed of Milton R. Klepper, McDannell Brown and himself, although he was not then and is not now a partner with Milton R. Klepper and McDannell Brown or with either of them.

Wherefore, your Complainants pray that the said J. Robert Patterson be ordered to make answer to this First Amended Complaint and that if upon trial of the issues he be found guilty of the matters herein charged his license to practice law before this court be revoked, annulled or

suspended or that he be otherwise punished or reprimanded and that such other relief be granted in the premises as to the court may seem just.

/s/ DAVID L. DAVIES,
/s/ SAMUEL H. MARTIN,
/s/ ROBERT A. LEEDY,
/s/ JAMES C. DEZENDORF,

Standing Committee on Discipline to the Bar of
this Court.

(Acknowledgment of Service.)

State of Oregon,
County of Multnomah—ss.

I, David Lloyd Davies, I, Samuel H. Martin, I, R. A. Leedy, and I, James C. Dezendorf, being first duly sworn, say: That I am a member of the Standing Committee on Discipline to the Bar of this Court and I am one of the Complainants in the within entitled cause and the foregoing Amended Complaint is true as I verily believe.

DAVID L. DAVIES,
SAMUEL H. MARTIN,
ROBERT A. LEEDY,
JAMES C. DEZENDORF.

Subscribed and sworn to before me this 4th day
of December, 1947.

(Seal) LOWELL MUNDORFF,
Clerk.

By F. L. BUCK,
Chief Deputy.

[Endorsed]: Filed December 4, 1947.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant above named and for answer to the Amended Complaint admits, denies and alleges:

I.

Admits paragraphs numbered I and II of the Amended Complaint.

II.

Answering Paragraph III of the Amended Complaint, defendant admits, denies and alleges:

Answer to Sub-Paragraph (a)

Answering sub-paragraph (a) of the Amended Complaint, defendant denies the allegations thereof, except as admitted, qualified, or alleged herein. Defendant admits that on the 8th day of October, 1945, he, as co-counsel with Milton R. Klepper, filed a complaint in this Court on behalf of one Marvin L. Hughes as plaintiff and against Alaska Steamship Company, a corporation, defendant, Civil No. 2923, and that thereafter said cause was prosecuted to a conclusion. Defendant further admits that he knew that one of the defenses which would be urged by said defendant corporation was that plaintiff's claim, if any, should be asserted against the United States of America. Defendant admits that by virtue of his employment as Assist-

ant United States attorney, he would have been without authorization to bring a suit against the United States of America. Defendant further alleges that he acted in good faith and pursuant to his best judgment of the legal status of his client's claim against said steamship company and defendant was informed and believed in respect thereto, that his client had no claim whatsoever against the United States of America, which said opinion has, as defendant understands, since been confirmed by the Supreme Court of the United States and other courts. Defendant further alleges that while he was serving as Assistant United States Attorney, similar cases, involving seamen, were filed and tried in this Court and that the defendants in such cases were not represented by the United States Attorney's office or by any one in behalf of the United States, so far as defendant was informed, and that such defenses in such cases were conducted by private attorneys and in behalf of private insurance carriers. That defendant, acting in good faith, did not believe that there would be any conflict between Marvin L. Hughes as plaintiff and the United States of America and/or the U. S. Attorney's office in its behalf, in respect to the litigation aforesaid. Defendant avers that the question of any possible impropriety in his appearance as co-counsel in said litigation was not at any time while said litiga-

tion was in process or at any time whatsoever called to his attention and defendant was not informed at any time of any such conflict of interests involved until on or about the 12th day of March, 1947, the date of the filing of the original complaint herein. That had defendant had the slightest knowledge or suggestion of even a claimed impropriety in his appearance as co-counsel in said cause, he would have immediately resigned as co-counsel and disclaimed all interest in such litigation. That defendant believed at all times herein pertinent that he was protecting the interest of the United States in respect to the issues arising in said cause.

Answer to Sub-Paragraph (b) of Amended Complaint:

Answering sub-paragraph (b) of the Amended Complaint, defendant denies the allegations thereof, except as admitted, qualified, or alleged herein. Defendant admits that on or about the 30th day of August, 1946, he accepted employment by one, James Westley Bowden, who had theretofore been charged in the Circuit Court of the State of Oregon, County of Multnomah, with the crime of murder. Defendant further admits that he served in a nominal capacity as co-counsel in behalf of said Westley Bowden at the trial and accepted a fee therefor. Defendant further admits that the Attorney General's manual governing the conduct of U. S. attorneys provides as follows:

“In the interest of cooperation between the two prosecuting agencies, and for other obvious reasons, assistant U. S. Attys. should not accept employment to defend persons charged with a crime in a state court.”

For further answer and defense defendant alleges that at the time he accepted the particular employment aforesaid, he was serving and had been serving for approximately two years last past as general counsel for the said Bowden and at the time he accepted employment on said particular charge, he was at the same time acting as attorney for said Bowden in divorce proceedings then pending in the Circuit Court of the State of Oregon for the County of Multnomah. That at no time, either prior to the acceptance of said particular employment aforesaid, or thereafter, to and until the 19th day of February, 1947, was defendant informed either directly or by way of suggestion that there was in existence an Attorney General's manual prescribing practices and/or policies in respect to the conduct of United States attorneys or their deputies, nor was defendant informed that by such manual or otherwise the Attorney General had placed any stricture whatsoever upon United States attorneys or their deputies appearing in state courts in respect to litigation and issues, civil or criminal, wherein no possible conflict of interest could arise between the United States on the one hand and a private litigant on the other.

That at the time defendant accepted employment in said particular litigation, to-wit, the case of State of Oregon v. James Westley Bowden, defendant informed the said Bowden that it would not be possible for him to actually try and accept responsibility for the trial of said cause, but that he would be obliged to call in another attorney to take charge of such defense. Thereafter, defendant procured in behalf of said Bowden the services of Edwin D. Hicks, an attorney, who accepted full responsibility in respect to all phases of said defense and who assumed such responsibility throughout the investigation prior to trial and the actual trial of said cause. That defendant's participation therein was in a nominal capacity only. Defendant made no presentations to the jury, either by way of opening statement or argument, and the full extent of his participation consisted of a brief cross-examination of one witness and by being present at the counsel table a part of the time while said trial was in progress. Defendant avers that at no time herein pertinent was defendant aware that he was breaching any ethic or any policy or any rule of propriety in doing that which he did so, as herein alleged, and defendant acted in the utmost of good faith throughout in respect to all phases of the matters and things hereinabove set forth. That had defendant been informed that there was any possibility of a contention of irregularity in this behalf, he

would have immediately withdrawn his name as co-counsel in said cause or taken such other steps as might have been indicated to avoid such contention being made.

Answer to sub-paragraph (c).

Answering sub-paragraph (c) of Paragraph III of the Amended Complaint, defendant denies the allegations thereof, except as admitted, qualified, or alleged herein. Defendant admits that on or about February 12, 1947, one Joseph Martin was referred to defendant in his capacity as Assistant U. S. Attorney in connection with proceedings to procure the release of certain wages theretofore allegedly earned by the said Joseph Martin and which had theretofore been allegedly deposited in the registry of the U. S. District Court at San Francisco, California. Defendant alleges that at the time said Joseph Martin was referred to defendant he was told by said Joseph Martin that such wages were in the registry of said Court at San Francisco, for the reason that he, said Martin, had been theretofore classed as a deserter from a vessel stationed in Sydney, Australia. Defendant informed said Joseph Martin that, in defendant's judgment, the only way by which the said Martin could procure the release of said wages was for him, the said Martin, to proceed to San Francisco, California, and to there take the matter up with the office of the U. S. Attorney at San Francisco or, as an alternative procedure, to employ a lawyer in San Francisco to represent him in such behalf.

The said Joseph Martin was further informed that upon any proceeding for withdrawal of such funds, testimony would have to be taken and that it would be necessary for the said Martin to testify in San Francisco concerning the matters applicable to such claim. The said Martin thereupon informed defendant that he was on probation and was not able to leave the District of Oregon and defendant thereupon told Joseph Martin that he, Martin, would not have any difficulty in securing permission to go to San Francisco for the purpose aforesaid. The said Martin informed defendant that he did not wish to go to San Francisco under any circumstance and the defendant thereupon inquired of the said Martin whether he had an attorney in Portland and the said Martin informed defendant that he did not have, but that his brother had an attorney. The Defendant thereupon advised the said Martin to consult his brother's attorney with respect to such claim, but the said Martin expressed no willingness to follow this advice, and that thereupon the defendant informed the said Martin that he was engaged in private practice in the Yeon Building, Portland, Oregon, and that if he, Martin, came to the decision that he did not wish to go to San Francisco or did not gain satisfaction from his brother's attorney that he, the defendant, would be glad to confer with Martin at his office in the Yeon Building and that he, the defendant, would do whatever he could to secure the release of the said wages. The defendant further alleges that at all times he was concerned in securing the release of

the said Martin's wages and to do everything in the said Martin's behalf that he could do and that thereupon the said Martin asked the said defendant what a private attorney would charge for doing the work and that the said defendant thereupon informed the said Martin that it would be impossible to tell him because it depended upon the amount of work that would be necessary to be done, but that the approximate legal fee that any private attorney would charge would be approximately One Hundred Seventy-five (\$175.00) Dollars and that the said Martin thereupon left the defendant's office and indicated that he was satisfied and would think it over and take such action as he deemed appropriate. Defendant alleges that he acted in good faith and did not believe that he could so represent the said Martin in securing the release of his funds at San Francisco in his official capacity as Assistant U. S. Attorney for the District of Oregon.

Answer to Sub-Paragraph (d).

Answering sub-paragraph (d) of Paragraph III of the Amended Complaint, defendant denies the allegation thereof, except as admitted, qualified, or alleged herein. Defendant admits that on December 7, 1945, and on January 4, 1946, respectively, he appeared in this Court as Assistant U. S. Attorney, representing the United States of America in two criminal proceedings brought by the said United States of America against Eugene Russell Costello, being numbers 16714 and 16715. Defendant further

admits that Milton R. Klepper appeared in said proceedings, representing the said Eugene Russell Costello, the defendant therein.

For further answer defendant alleges that on the dates aforesaid he was not associated as a partner or otherwise with Milton R. Klepper in the practice of law and that the only connection which he had at said times with the said Milton R. Klepper was that he, the defendant, shared office space in the same offices with the said Milton R. Klepper and that he did not share in any of the fees obtained by the said Milton R. Klepper in the practice of law or otherwise. Defendant further alleges that he fully informed the Court of the defendant's prior record and of all pertinent facts known to him related to the offenses with which the said defendant was charged as aforesaid and to which his pleas of guilty were entered. That in connection with said proceeding, the defendant's prior record was fully investigated by the U. S. Probation officers before sentences were imposed by the Court and the defendant made no recommendations, either for or against the defendant, nor were any misleading statements proffered to the Court by the defendant in such behalf. Defendant alleges that he acted with the utmost of good faith throughout and that he was not aware that he was breaching any propriety of ethics in such behalf. Reference is hereby made to that certain transcript of such proceedings prepared by the official court reporter of this Court, which said proceedings are by this

reference incorporated herein as though fully set forth and alleged.

Answer to Sub-Paragraph (e).

Answering sub-paragraph (e) of Paragraph III of the first Amended Complaint in disciplinary proceedings, denies each and every allegation, thing and matter therein contained, except as the same may be admitted, qualified or alleged herein.

This defendant alleges the true facts to be as follows: That he was associated with said Klepper and Brown in a law office in the Yeon Building, Portland, Oregon; that names appear upon the door thereof, Klepper, Brown & Patterson; that similar names appear upon stationery, including letter-heads, as used by those in said office; that a room was furnished this defendant and therefore this defendant appeared in court in any proceeding filed by said Klepper or Brown where he was requested to so appear, handling ex-parte matters, arguing motions and demurrers and assisting in the preparation for trial of every question; that said Klepper received one-half of any fees collected by this defendant; that an assumed business name was filed on or about October 2, 1946; that defendant had knowledge thereof.

That one of the objects and use of said name was to enable this defendant to appear in any proceeding without the necessity of having his name entered by motion as an attorney of record, and this defendant alleges that this inured to the benefit of the clients of said office and said lawyers involved;

that this defendant was never conscious of a violation of any of the Canons of Ethics of the American Bar Association or of the Oregon State Bar; that defendant always considered himself a quasi- or limited or special partner with said Klepper and said Brown by reason of the things herein stated; that no client or other attorney or court was ever imposed upon or misled by the defendant in respect to any of the things and matters set forth in subparagraph (e) or at all or in any manner; that this defendant was not familiar with the answers as made to certain questions pertaining to certain Canons of Ethics of the American Bar Association by a committee of the American Bar Association; that he has attempted to secure said answers and opinions with respect to certain Canons of Ethics as the same have been furnished him by a committee, but has been unable to find them in the State of Oregon subsequent to the year 1937; that defendant, therefore, alleges that there was no conscious, intentional or willful or assumed violation of any Canon of Ethics of the American Bar Association or of the Oregon Bar Association, and that if defendant erred, such error was one of misjudgment and not of mind, heart or conscience.

By way of general allegation in response to all of the charges mentioned in the Complaint herein, defendant alleges that he had been engaged in the practice of law as of the time of filing of such complaint for a total period of two and one-half years. That while engaged in private practice before entering the office of the United States Attorney and while engaged in the administration of his duties

as Assistant United States Attorney the defendant has always and without exception conducted his work in accordance with his understanding of the rules of ethics and canons of conduct applicable to such duties and responsibilities which he assumed. That if defendant erred in respect to any matters mentioned in the complaint, such error was one of misjudgment and not one of heart, mind or conscience.

Wherefore, defendant having fully answered plaintiff's Amended Complaint, prays that the same be dismissed.

/s/ B. A. GREEN,

Attorney for Defendant.

(Duly verified.)

[Endorsed]: Filed Dec. 17, 1947.

November 1947 Term

41st day, Friday, December 19, 1947.

Whereupon, the Secret Session of this court convened; present the Honorable James Alger Fee and the Honorable Claude McColloch, United States District Judges, Mr. Lowell Mundorff, Clerk, and Mr. Cloyd D. Rauch, Court Reporter.

The following proceedings were had before the Honorable James Alger Fee and the Honorable Claude McColloch, United States District Judges, to-wit:

[Title of Cause.]

Now at this day comes the plaintiff by Mr. James C. Dezendorf, of the Standing Committee on Discipline to the bar of this court and the respondent, J. Robert Patterson, in his own proper person

and by Mr. B. A. Green, his attorney. Whereupon, upon motion of respondent, through his attorney,

It Is Ordered that the title of this cause be amended to read: In re J. Robert Patterson; and

Whereupon, upon the Court's own motion,

It Is Further Ordered that Mr. Henry L. Hess, United States Attorney, be present during the trial of this proceeding; and

Whereupon, upon application of Mr. Henry L. Hess, United States Attorney,

It Is Ordered that Edward B. Twining, be, and he is hereby, granted permission to be present during the hearing and trial of this proceeding;

Whereupon, this cause comes on to be tried. Witnesses were sworn and testified, exhibits were admitted in evidence, and the parties having rested,

It Is Ordered that the respective parties hereto be, and are hereby, allowed to and including January 20, 1948, within which to submit their briefs herein; and,

It Is Further Ordered that this cause be, and is hereby continued for argument to Thursday, January 22, 1948.

In the District Court of the United States
for the District of Oregon

In Re J. Robert Patterson

To the Honorable James Alger Fee and Claude McColloch, Judges of the District Court of the United States, for the District of Oregon:

Each member of the Committee having read the transcript of testimony and the brief filed by J. Robert Patterson and in response to the Court's

request that the Committee submit a recommendation in this matter, David Lloyd Davies, Samuel H. Martin, R. A. Leedy and James C. Dezendorf, as the Standing Committee on Discipline to the Bar of this Court, recommend that J. Robert Patterson be permanently disbarred and that his name be stricken from the roll of attorneys entitled to practice in this Court.

Dated at Portland, Oregon, this 4th day of February, 1948.

/s/ DAVID LLOYD DAVIES,

/s/ SAMUEL H. MARTIN,

/s/ ROBERT A. LEEDY,

/s/ JAMES C. DEZENDORF,

Standing Committee on Discipline to the Bar of
this Court.

(Acknowledgment of Service.)

[Endorsed]: Filed Feb. 5, 1948.

[Title of District Court and Cause.]

OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

J. Robert Patterson objects to Conclusions of Law numbered I, II, III, IV, V and VI appearing on pages 5 and 6 of the Findings of Fact and Conclusions of Law in their entirety, on the ground and for the reason that the said Findings of Fact do not substantiate or warrant or justify the said Conclusions of Law.

/s/ B. A. GREEN,

Attorney for J. Robert
Patterson.

[Endorsed]: Filed Nov. 16, 1948.

[Title of District Court and Cause.]

MOTION TO AMEND FINDINGS OF FACT

J. Robert Patterson moves that the Findings of Fact be amended in the following particulars:

I.

By striking the following phrase from Paragraph I of the Findings of Fact on page 2 of the Findings of Fact and Conclusions of Law and which is in the following words:

“This court was not aware of the relationship between Patterson and Klepper and between Patterson, Klepper and Brown until the same was brought to the attention of the court by the complaint in this proceeding.”

II.

By striking the following phrase from Paragraph V of the Findings of Fact on page 5 of the Findings of Fact and Conclusions of Law and which is in the following words:

“At the time of these occurrences the court was unaware of the relationship between Patterson and Klepper and”.

/s/ B. A. GREEN,

Attorney for J. Robert Patterson.

J. Robert Patterson contends that the evidence does not support or substantiate the Findings of Fact and the particulars as set forth herein.

/s/ B. A. GREEN,

Attorney for J. Robert Patterson.

[Endorsed]: Filed Nov. 16, 1948.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter came on regularly for hearing before the undersigned Judges of the above entitled Court on December 19, 1947. J. Robert Patterson appeared in person and by and through B. A. Green, one of his attorneys. The Standing Committee on Discipline to the Bar of this Court appeared by and through James C. Dezendorf. Evidence on behalf of the Committee and that offered by J. Robert Patterson was duly heard and received. After the close of the evidence, briefs on behalf of the Committee and J. Robert Patterson were duly filed. Thereafter the Committee served and filed its recommendation and the matter was finally submitted. Due consideration having been given to the record, the briefs, and the Committee's recommendation, and the Court being now fully advised, hereby makes and enters the following:

FINDINGS OF FACT

I.

J. Robert Patterson was admitted to practice before the courts of Oregon in September, 1941. In October, 1944, he became associated with Milton R. Klepper and moved into Klepper's suite of offices in the Yeon Building. On May 21, 1945, J. Robert Patterson accepted an appointment as Assistant United States District Attorney for the District of Oregon. J. Robert Patterson was admitted

to practice before this court on July 2, 1945. Under his contract of employment with the United States of America, Patterson was permitted to engage in such private practice of law as would not be inconsistent to his duties as Assistant United States Attorney. When Patterson first became associated with Klepper, he was given a drawing account of \$50.00 a week and all fees charged and collected by Patterson were divided equally between him and Klepper. Klepper paid all of the office overhead including rent, stenographer's salary, stationery, etc. After May 21, 1945, when Patterson became Assistant United States Attorney, he retained his office in Klepper's suite and their arrangement was continued the same as before except that the \$50.00 a week drawing account was discontinued. Commencing on or about October 2, 1946, Milton R. Klepper, McDannell Brown and J. Robert Patterson assumed the firm name of "Klepper, Brown & Patterson" and an assumed business name certificate covering the firm name was filed with the County Clerk of Multnomah County, Oregon. All of the matters related in paragraphs III, IV and VI of these findings occurred while Patterson held the office of Assistant United States Attorney and while he was engaged in private practice in association with Milton R. Klepper and McDannell Brown and after assumed name certificate covering the name of Klepper, Brown & Patterson had been filed with the County Clerk of Multnomah County. The matters related in paragraphs II and V of these findings occurred while Patterson held the

office of Assistant United States Attorney and while he was engaged in private practice in association with Milton R. Klepper but before any assumed name certificate had been filed in Multnomah County and before the parties were doing business under a firm name. This court was not aware of the relationship between Patterson and Klepper and between Patterson, Klepper and Brown until the same was brought to the attention of the court by the complaint in this proceeding.

II.

Marvin L. Hughes v. Alaska Steamship Company

Marvin L. Hughes, on August 8, 1945, was injured while a passenger on a vessel operated by the Alaska Steamship Company and owned by the United States of America. He consulted J. Robert Patterson in regard to his remedies and on October 8, 1945, J. Robert Patterson and Milton R. Klepper filed a complaint in this court against Alaska Steamship Company, Civil No. 2923. On November 5, 1945, the defendant Alaska Steamship Company filed an answer in said action which said answer asserted a further and separate defense in the following language:

“For a further separate answer and defense defendant alleges that at none of the times alleged in the complaint was defendant the owner of said SS “Yukon,” nor in the sole control of said ship, nor at any of said times was defendant managing or operating said ship, except in a very limited sense, to wit, it was attending to the business of said vessel under

the terms and conditions of a certain agreement between it and the United States of America, represented by the United States of America, represented by the War Shipping Administration, and not otherwise, and said agreement is well known in the steamship business as GAA42, and has been published in the Federal Register and will be adduced at the trial of this cause."

At the time that said Marvin L. Hughes consulted Patterson it was well known to lawyers that there was a serious question as to whether or not persons having claims for damages of the nature of Hughes' claim could bring an action against the steamship companies operating or conducting the business of the ship or whether the remedy in such cases was by action against the United States under the Suits in Admiralty Act and Patterson either knew or should have known of such question and that after the filing of the answer in the Hughes case Patterson did know of such question. Patterson was not in a position to represent Hughes in an action against the United States and by reason of his position as Assistant United States Attorney he was not in a position to give Hughes disinterested advice as to whether he should institute an action against the Alaska Steamship Company or against the United States. Patterson did not discuss with Hughes the existence of a conflict between his duties as Assistant United States Attorney and his duties as attorney for Hughes. Patterson thought he was protecting the United States of America. (Transcript of Testimony Page 51.)

III.

State of Oregon v. Westley Bowden

J. Robert Patterson, while Assistant United States Attorney and while actively performing his duties as such, acted as attorney for J. Westley Bowden in a criminal action instituted in the Circuit Court of the State of Oregon for the County of Multnomah in which Bowden was charged with the crime of murder in the first degree, and in the course of such representation of Bowden as his attorney, Patterson frequently consulted with and counseled with said Bowden; made arrangements with Edwin D. Hicks for Hicks to act as chief counsel for Bowden; appeared in court as one of defendant's counsel throughout the trial; cross-examined one witness and accepted a fee for his services. The trial was of a sensational nature and was given wide publicity. The Attorney General's manual governing the conduct of United States Attorneys provides:

“In the interest of cooperation between the two prosecuting agencies, and for other obvious reasons, assistant U. S. Attys. should not accept employment to defend persons charged with a crime in a state court.”

IV.

Joseph Martin Matter

Joseph Martin, a parolee, was referred to Patterson in his capacity as Assistant United States Attorney in connection with Martin's desire to procure the release of certain funds deposited in the registry of the United States District Court at San

Francisco. Patterson advised Martin as to the method of procuring the release of the funds involved and invited Martin to consult him at his private office in the Yeon Building, and Patterson advised Martin that the estimated fee for handling the matter was \$175.00.

V.

United States of America v. Eugene Russell Costello (2 cases)

In October, 1945, J. Robert Patterson presented the facts regarding certain violations of the criminal laws of the United States by Eugene Russell Costello to the Grand Jury of the United States which, on October 17, 1945, returned two indictments respectively which said indictments were signed by the foreman of the Grand Jury and by J. Robert Patterson, Assistant United States Attorney. Thereafter, an aunt of Eugene Russell Costello discussed with Patterson the selection of an attorney to represent Costello and Patterson gave her Klepper's name as one of several attorneys that Costello might retain. Thereafter, Costello retained Klepper as one of his attorneys and notwithstanding the relationship and association between Patterson and Klepper (as set out in paragraphs I and VI hereof) Patterson continued to present the case on behalf of the United States and appeared before the Court at the time that Costello was arranged and plead guilty and again at the time that Costello was sentenced. Patterson also prepared the order directing that the money deposited as bail be returned to Costello. At the time of these occurrences

the court was unaware of the relationship between Patterson and Klepper and Patterson failed to disclose the relationship to the court.

VI.

Practicing Law as a Partner

Commencing October 2, 1946, J. Robert Patterson, McDannell Brown and Milton R. Klepper were engaged in the private practice of law in the Yeon Building in Portland, Oregon, and on the door of their suite of offices appeared the following: "Klepper, Brown & Patterson, Attorneys at Law. Milton R. Klepper, McDannell Brown, J. Robert Patterson" the stationery they used was headed as follows:

"Klepper, Brown & Patterson
Law Offices
522 Southwest Fifth Avenue
Portland 4, Oregon

Milton R. Klepper,
McDannell Brown,
J. Robert Patterson Telephone ATwater 9474"
the letters which Patterson wrote on this stationery were signed:

"Klepper, Brown & Patterson
By J. Robert Patterson",

the pleading paper used by them contained the following on the lower left hand corner:

"Klepper, Brown & Patterson
Attorneys at Law
Yeon Building
Portland 4, Oregon"

and the professional card used by Mr. Patterson was:

“J. Robert Patterson ATwater 9474
Klepper, Brown & Patterson Yeon Building
Attorneys at Law Portland 4, Oregon”

VII.

The Standing Committee on Discipline to the Bar of this Court has made a recommendation that J. Robert Patterson be permanently disbarred and that his name be stricken from the roll of attorneys entitled to practice in this court.

Based upon the foregoing findings of fact, the court hereby makes and enters the following:

CONCLUSIONS OF LAW

I.

The relationship between Milton R. Klepper and J. Robert Patterson at all times mentioned in these Findings and Conclusions was such that it was improper for them to appear on opposite sides of any action.

II.

The duties of Patterson as Assistant United States Attorney and as a member of the bar of this court were such that it was improper for him to advise Marvin L. Hughes as to his respective rights and choice of remedies as between the Alaska Steamship Company and the United States of America.

III.

The duties of J. Robert Patterson as Assistant United States Attorney and as a member of the

bar of this court, were such that it was improper for Patterson to offer to act as private counsel for Joseph Martin. It was also improper for Patterson to solicit private law business from a man on parole.

IV.

The duties of J. Robert Patterson as Assistant United States Attorney and as a member of the bar of this court, were such that it was improper for him to represent J. Westley Bowden in defending a charge of murder in the Circuit Court of the State of Oregon for the County of Multnomah.

V.

The duties of J. Robert Patterson as Assistant United States Attorney and as a member of the bar of this court, were such that it was highly improper for him to suggest to Eugene Russell Costello, either directly or indirectly, the name of any attorney to represent him and particularly to suggest the name of Milton R. Klepper in view of the relationship and association between Patterson and Klepper; and it was further highly improper for Patterson to continue to present the said cases to the court on behalf of the United States after the said Costello had retained Milton R. Klepper as his attorney.

VI.

J. Robert Patterson has so flagrantly disregarded the rules governing the professional conduct of lawyers that the recommendation of the Standing Committee on Discipline should be accepted and ap-

proved, and J. Robert Patterson should be permanently disbarred and his name should be stricken from the roll of attorneys entitled to practice in this court.

Dated at Portland, Oregon, this 24th day of January, 1949.

/s/ JAMES ALGER FEE,
United States District Judge.

/s/ CLAUDE McCOLLOCH,
United States District Judge.

[Endorsed]: Filed Jan. 24, 1949.

In the District Court of the United States
for the District of Oregon

D-3

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. ROBERT PATTERSON,

Defendant.

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law heretofore entered herein, and the Court being fully advised it is hereby

Ordered, adjudged and decreed that the recommendation of the Standing Committee on Discipline to the Bar of this Court be and the same hereby is accepted and approved, and it is further

Ordered, adjudged and decreed that J. Robert Patterson be permanently disbarred and that his

name be stricken from the roll of attorneys entitled to practice in this court.

Dated at Portland, Oregon, this 24th day of January, 1949.

/s/ CLAUDE McCOLLOCH,
District Judge.

[Endorsed]: Filed Jan. 24, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: The Standing Committee on Discipline to the
Bar of the Above-entitled Court:

You and each of you will please take notice that J. Robert Patterson appeals to the Ninth Circuit Court of Appeals from that certain judgment in the above entitled action, made and entered the 24th day of January, 1949, by the Honorable James A. Fee and the Honorable Claude McCulloch, Judges of the above entitled Court, wherein it was ordered, adjudged and decreed that the recommendation of the Standing Committee on Discipline to the Bar of this Court be accepted and approved, and it was further ordered, adjudged and decreed that J. Robert Patterson be permanently disbarred and that his name be stricken from the roll of attorneys entitled to practice in this Court.

Dated this 24th day of January, 1949.

/s/B. A. GREEN,

Attorney for J. Robert Patterson.

(Acknowledgment of Service.)

[Endorsed]: Filed Jan. 24, 1949.

[Title of District Court and Cause.]

BOND ON APPEAL

Whereas, the Respondent, J. Robert Patterson in the above entitled action appeals to the United States Court of Appeals for the Ninth Circuit, from a judgment made and entered against the Respondent in the said action in the United States District Court for the District of Oregon on the 24th day of January A. D. 1949.

Now, therefore, in consideration of the premises, and of such appeal, the undersigned, the United States Fidelity and Guaranty Company, of Baltimore, Maryland, a corporation organized and existing under the laws of the State of Maryland, and authorized and empowered under the laws of the State of Oregon to become surety upon bonds, undertakings, etc., in the State of Oregon, does hereby jointly and severally undertake and promise, on the part of the appellant, that the said appellant will pay all costs and disbursements which may be awarded against him on the appeal not to exceed Two Hundred Fifty Dollars (\$250.00). But this understanding does not stay the proceedings in this cause.

(Seal) UNITED STATES FIDELITY AND
GUARANTY COMPANY.

By /s/ CECIL R. ALEXANDER,
Attorney-in-Fact.

Countersigned:

By /s/ PAUL F. NOLAN,
Resident Agent for State of Oregon.

(Acknowledgment of Service.)

[Endorsed]: Filed Jan. 26, 1949.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

The appellant respectfully submits the following statement of points on which the appellant intends to rely on appeal:

I.

The District Court erred in entering its Findings of Fact and Conclusions of Law and Judgment of Permanent Disbarrment against the appellant, for the reason that the evidence is insufficient to justify or support the said Findings of Fact, Conclusions of Law and the Judgment.

/s/B. A. GREEN,

Attorney for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Jan. 27, 1949.

[Title of District Court and Cause.]

ORDER TO FORWARD EXHIBITS

This matter coming on before the undersigned Judge of the above entitled Court on the motion of the appellant for an order directing the Clerk to forward all of the exhibits received in the above entitled cause to the Ninth Circuit Court of Appeals, it appearing that the appellant has filed Notice of Appeal to the Circuit Court of Appeals for the Ninth Circuit; the Court being fully advised;

It is therefore ordered that the Clerk of the above entitled Court be and he is hereby directed to forward to Paul P. O'Brien, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit all of the exhibits received in the above entitled cause.

Dated this 29th day of January, 1949.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed Jan. 29, 1949.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the District Court of the United States for the District of Oregon:

The appellant designates the following as the record to be forwarded to the United States Court of Appeals for the Ninth Circuit in the appeal of the above entitled cause, it being the appellant's intention to designate the whole and entire record:

1. The first amended complaint.
2. Answer to first amended complaint.
3. Order changing title of case.
4. Recommendation of Standing Committee.
5. Findings of Fact and Conclusions of Law.
6. Motion to amend findings of fact.
7. Objections to Findings of Fact and Conclusions of Law.
8. Opinion.
9. Judgment.
10. Notice of appeal.
11. Bond for costs on appeal.
12. Statement of points on appeal.
13. Designation of record.
14. Order to forward exhibits.
15. Transcript of the following proceedings:
December 19, 1947; June 28, 1948; July 30, 1948;
January 24, 1949.

/s/B. A. GREEN,

Attorney for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Jan. 27, 1949.

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

Mar. 7—Filed report of Chairman Dezendorf.

Mar. 12—Filed complaint in disciplinary proceedings.

Mar. 17—Filed return of service by Marshal.

Apr. 2—Filed motion of J. Robert Patterson.

Apr. 16—Filed Amended Complaint in Disciplinary Proceedings.

May 9—Filed Answer.

July 1—Record of Hearing of Application for trial date.

Dec. 4—Filed First Amended Complaint in Disciplinary Proceedings.

Dec. 17—Filed Answer.

Dec. 19—Record of Trial. Entered Order that Henry Hess U. S. Attorney be present; granted application of Henry Hess that E. B. Twining, Asst. U. S. Atty. be permitted to be present. Evidence adduced. Entered order that briefs be submitted by Jan. 20, 1948 and setting case for argument on January 22, 1948. Entered order changing title of case to "In Re J. Robert Patterson."

Dec. 19—Filed Trial Brief of Standing Committee on Discipline.

1948.

Jan. 20—Filed copy of Trial Brief of Standing Committee on Discipline.

1948

- Jan. 20—Filed Brief, with copy, of Standing Committee on Discipline.
- Jan. 20—Filed Respondent's Brief with copy.
- Jan. 22—Record of further hearing. Entered order of reference to Standing Committee on Discipline for recommendation.
- Feb. 5—Filed Recommendation of Standing Committee on Discipline.
- June 28—Record of further hearing; brief statement by B. A. Green. Entered order directing Standing Committee on Discipline to prepare findings of fact, conclusions of law and order of disbarment.
- July 2—Lodged proposed "Findings of Facts and Conclusions of Law."
- July 9—Filed motion to Amend Proposed Findings.
- July 9—Filed objections to Findings and Conclusions.
- July 30—Record of Hearing on Objections to Findings and on Motion to Amend Findings.
- Aug. 11—Filed Transcript of Proceedings of December 19, 1947, June 28, 1948 and July 30, 1948.
- Aug. 21—Filed Copy of Transcript of Proceedings of July 30, 1948.
- Aug. 21—Lodged second proposed "Findings of Fact and Conclusions of Law."
- Aug. 27—Filed Motion to Amend proposed Findings of Fact.
- Aug. 27—Filed objections to Findings of Fact and Conclusions of Law.

1948

Nov. 8—Lodged third proposed “Findings of Fact and Conclusions of Law.”

Nov. 16—Filed Motion to Amend Findings of Fact.

Nov. 16—Filed objections to Findings of Fact and Conclusions of Law.

1949

Jan. 24—Record of further hearing. Entered order denying motion to Amend Findings of Fact and Order Overruling objections to Findings of Fact and Conclusions of Law.

Jan. 24—Filed and entered Findings of Fact and Conclusions of Law (signed by Fee and McColloch).

Jan. 24—Filed and entered Judgment of Disbarment.

Jan. 24—Filed notice of appeal.

Jan. 26—Filed bond for costs on appeal.

Jan. 27—Filed statement of points on appeal.

Jan. 27—Filed designation of record on appeal.

Jan. 29—Filed order to forward original exhibits.

United States of America,
District of Oregon—ss.

CERTIFICATE OF CLERK

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing documents consisting of First Amended Complaint, Answer of J. Robert Patterson, Order to amend title, Recommendation of Standing Committee, Objections to

Findings of Fact and Conclusions of Law, Motion to Amend Findings of Fact and Conclusions of Law, Findings of Fact and Conclusions of Law, Judgment of Disbarment, Notice of Appeal, Bond on Appeal, Statement of Points on Appeal, Order to forward Exhibits, Designation of Record on Appeal, Transcript of Docket Entries, and Clerk's certificate, constitute the record on appeal from a judgment of said court in a cause therein numbered D-3, In re J. Robert Patterson, the said J. Robert Patterson being the appellant; that the record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, with the exception of the opinion which was not filed in this case, and in accordance with the rules of this court and the Court of Appeals.

I further certify that the costs of this appeal, \$5.00, has been paid by the appellant.

I further certify that there is enclosed with this record on appeal Exhibits Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, transcript of testimony dated December 19, 1947, June 28, 1948, and July 30, 1948, also transcript of proceedings dated January 24, 1949.

In testimony whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 3rd day of February, 1949.

(Seal)

LOWELL MUNDORFF,
Clerk.

In the District Court of the United States for the
District of Oregon

In re: J. Robert Patterson

Before: Honorable James Alger Fee, Judge; Honorable Claude McColloch, Judge.

Appearances: Mr. James Dezendorf, Attorney and member of the Standing Committee on Discipline to the Bar of the District Court of the United States for the District of Oregon, appearing on behalf of said Committee; Mr. J. Robert Patterson, in person and by Mr. B. A. Green, his attorney.

Court Reporter: Cloyd D. Rauch.
Portland, Oregon, Friday, December 19, 1947 a.m.

PROCEEDINGS:

Mr. Dezendorf: May it please the Court, this is a disbarment matter involving Mr. J. Robert Patterson. Mr. Green advised me, two days ago, that there is some question in his mind as to the propriety of the United States being plaintiff. [1*] He also furnished me with a brief which raises the question as to whether the United States of America may appear except by the Attorney General. In checking the authorities I find that the practice in this District has always been to have the United States of America as plaintiff, whereas in most cases the United States Attorney has been the attorney in the case. In checking the authorities generally I find that the cases are pretty well divided

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

between those in which the United States of America is the plaintiff and those where the case is merely entitled in re the person who is involved. There is a rather interesting case on the subject, decided by the Circuit Court of Appeals for this Circuit, which is the United States vs. Hicks, in which it is indicated that perhaps the United States should be the party, although the titling of the case merely in re the person involved is also approved. That is the case reported in 37 Fed. (2d) at page 289.

Mr. Green also informed me that he would make no objection to proceeding at this time, in any event, but that he would prefer to have the case merely entitled "In re J. Robert Patterson"—is that correct, Mr. Green?

Mr. Green: That is correct, but I would like to make a statement to the Court as to my reasons. My basic reason for raising the question with Mr. Dezendorf was the fact that I don't think this Committee has any authority to represent the sovereign power. I find nothing in the statute giving this [2] Court the power to appoint a committee whereby they could come in and represent the United States of America, and so I raised the question with Mr. Dezendorf, which convinced me that it is wrongfully entitled and that it should be entitled "In re Patterson," and I told Mr. Dezendorf that we would have no objection to changing that at this time and we would proceed immediately, but that I would withhold filing any motion to dismiss if the matter was changed in that manner. I simply want to state again to the Court that I don't think

anybody can represent the sovereign power without some statutory authority, and I have not been able to find it.

The Court (Fee, J.): Well, I will give you my idea. This court represents the sovereign power, though I have no hesitation about saying to you that I will let you change the title. I don't care how it is titled. This is a trial by the Court, in the name of the sovereign power, of one of its attorneys, and I have no feeling at all that the title should not be changed and I will direct it to be changed.

Mr. Green: All right, I admit I raise no objection, your Honor. I recognize that your Honor represents the sovereign power and the proceeding is not brought in the name of Judge Fee and Judge McColloch.

The Court (Fee, J.): That isn't my idea. I think the Court has the right to entitle it in that way, being a proceeding by the Court with reference to one of its attorneys, but if there is any objection to proceeding in that way I shall direct that the [3] proceeding be changed to an "In re" proceeding and the title to be carried on in that way.

Mr. Dezendorf: If the Court please, the issues are made up by the First Amended Complaint and the Answer which has been filed to it. The substance of the complaint has, generally speaking, been admitted. The first charge, which is paragraph III (a), is:

"That on October 8, 1945 he"—J. Robert Patterson—"filed a complaint in this court on behalf of Marvin L. Hughes, Plaintiff, vs. Alaska Steamship Company, a corporation, Defendant, Civil No. 2923,

and thereafter prosecuted said cause to a conclusion, although he well knew that one of the principal defenses that would be urged by the Defendant was that the Plaintiff's claim, if any, should be asserted against the United States of America, whom he was not in a position to sue because of his office as Assistant United States Attorney."

That is admitted in the answer. However, at this time I think it might be advisable to offer the record in that case, and I think the Court has it.

The Court (Fee, J.): Just before you proceed, Mr. Dezendorf, I note the absence of the United States Attorney's office. Mr. Mundorff, will you call up the United States Attorney, Mr. Hess, and tell him to come into court, that I so direct.

(A short recess was had, following which proceedings were resumed, as follows:) [4]

(The appearance of Honorable Henry L. Hess, United States Attorney, is noted.)

The Court (Fee, J.): Mr. Hess, the Court has directed you to come in and sit in in this proceeding, not in any formal character, but the title of the case has now been changed from the United States against Patterson to the title of "In re Patterson."

Mr. Hess: Yes, your Honor.

The Court (Fee, J.): And the Court, however, directs that you sit through the proceeding.

Mr. Hess: Would your Honor have any objection to Mr. Twining sitting through with me in the case?

The Court (Fee, J.): Sitting with you?

Mr. Hess: Yes.

The Court (Fee, J.): I have no objection to his sitting with you.

Mr. Hess: I wonder if Mr. Mundorff—I think Mr. Twining was expecting to be here this morning but I wonder if Mr. Mundorff will let him know?

The Court (Fee, J.): Yes, I will so direct.

Mr. Hess: Thank you.

The Court (Fee, J.): I won't substitute Mr. Twining for you.

Mr. Hess: How is that?

The Court (Fee, J.): I won't substitute Mr. Twining for [5] you.

Mr. Hess: Yes, I understand that, your Honor.

Mr. Green: I don't know of any rules, I haven't been able to find any rules, under which this is being conducted. This is an informal proceeding, yet very formal. We expect to call Mr. Twining as a witness in the matter, and I understand from inquiry that the Court sometimes excluded all witnesses.

The Court (Fee, J.): Yes, that is true.

Mr. Green: And that is the reason I am calling it to the Court's attention.

The Court (Fee, J.): No, that is all right; I will be very glad to have Mr. Twining sit in and testify if he wants to.

Mr. Green: And without waiving our right to call him.

Mr. Hess: You have no objection?

Mr. Green: None whatever. I simply wanted to call that to the Court's attention.

The Court (Fee, J.): All right, you may proceed without waiting for Mr. Twining.

(Mr. Edward B. Twining, Assistant United States Attorney, thereafter appeared and sat at counsel table throughout the proceeding, except when testifying.)

Mr. Green: Before proceeding, I understand Mr. Dezendorf is wanting to introduce a record in the files, and I just want to inquire,—I make my objection in the normal manner and save [6] my exception in the normal manner, is that correct?

The Court (Fee, J.): These proceedings are somewhat *sui generis*, Mr. Green. I don't know any particular rule to be followed, and, as a matter of fact, the Court, I think, has the power, without trial, if the Court were satisfied, to strike the name of an attorney from the roll. At least, I have always assumed that the Court has that power, if the Court were satisfied of the situation without hearing, but I will accord you any method that you desire to proceed, any way that you want to protect any rights that Mr. Patterson may have.

Mr. Green: All right, thank you. Then the other thing I want to mention before the testimony proceeds, Mr. Dezendorf made the statement that we had admitted all the charges in the Complaint. Now, I think that the Answer does not bear that out completely, but I would not want that statement made of record, because there have been no opening statements called for here, and I would not want the record to show that, that we have admitted all charges in the Complaint. We have denied and then we have made certain allegations in our Answer as to substantial facts, and my only purpose in calling attention to this in the record at this time is that

it shall not be charged that we have agreed to everything Mr. Dezendorf has said.

The Court (McColloch, J.): Have you filed a reply, Mr. Dezendorf?

Mr. Dezendorf: We have not filed a reply. [7]

The Court (McColloch, J.): What is your position as to that?

Mr. Dezendorf: We do not feel that we are required—we are prepared to admit most of the affirmative allegations of the Answer.

The Court (McColloch, J.): However, in not replying, you do not consider that you are admitting by virtue of that?

Mr. Dezendorf: No.

The Court (McColloch, J.): You probably have in mind that in normal pleadings a reply not necessary.

Mr. Dezendorf: That is right.

The Court (Fee, J.): In order that there be no difficulty about that, the Court will, if there is no objection, treat it as though there was a reply filed to the general denial.

Mr. Green: We will have no objection.

The Court (Fee, J.): All right.

Mr. Dezendorf: The second charge is, "That on or about the 30th day of August, 1946, he accepted employment by one Westley Bowden, who was charged in the Circuit Court of the State of Oregon, for Multnomah County, with the crime of murder, and he represented said Westley Bowden at the trial and accepted a fee therefor although he expected to be called as a witness at the trial of said Westley Bowden and although the Attorney General's manual governing the con-

duct of United States Attorneys directs that United States Attorneys shall not [8] represent a person charged with a crime in a State Court.”

The allegations of the Answer in this regard are in the nature of admissions, and I refer now to page 2 and will read it, as follows:

“Defendant admits that on or about the 30th day of August, 1946, he accepted employment by one, James Westley Bowden, who had theretofore been charged in the Circuit Court of the State of Oregon, County of Multnomah, with the crime of murder. Defendant further admits that he served in a nominal capacity as co-counsel in behalf of said Westley Bowden at the trial and accepted a fee therefor, although he expected to be called as a witness at the trial. Defendant further admits that the Attorney General’s manual governing the conduct of U. S. Attorneys provides as follows:

“‘In the interest of cooperation between the two prosecuting agencies, and for other obvious reasons, assistant U. S. Attys. should not accept employment to defend persons charged with a crime in a state court.’”

The rest of the Answer with regard to that charge is in the nature of an allegation, as distinguished from an admission.

(At this point Mr. Edward B. Twining, Assistant United States Attorney, entered the room.)

The Court (Fee, J.): I understand that there has been an Amended Answer. Are you read-

ing from the original Answer or the Amended Answer? [9]

Mr. Dezendorf: I thought I was reading from the Amended Answer. Perhaps I am not. Yes, this is the Amended Answer, filed on the 17th of December.

The Court (Fee, J.): On the 17th. It is not so entitled. I just wanted to be sure.

Mr. Dezendorf: Yes, I am referring to the Amended Answer.

The Court (Fee, J.): In order that the record be straight, we are proceeding upon the First Amended Complaint, filed December 4, 1947, and the Answer, not entitled as an Amended Answer, but the Answer entitled as an Answer to the Amended Complaint, filed December 17, 1947.

Mr. Green: That is correct.

The Court (Fee, J.): Now that the Clerk is back, I would like to have that file No. 2923 marked as an exhibit.

(Said file, containing pleadings, exhibits and other documents in cause entitled, in the District Court of the United States for the District of Oregon, Marvin L. Hughes, plaintiff, vs. Alaska Steamship Company, a corporation, defendant, Civil No. 2923, was thereupon marked for identification as Exhibit 2.)

Mr. Dezendorf: I offer in evidence the Exhibit No. 2.

Mr. Green: May I inquire, this is the complete judgment role in the Hughes case, is that correct?

Mr. Dezendorf: That is my understanding. [10]

Mr. Green: I haven't any objection.

The Court (Fee, J.): Admitted. It may be marked later.

(Said file, so offered and received, having previously been marked for identification, was thereupon marked received as Exhibit 2.)

Mr. Dezendorf: In view of Mr. Green's statement with regard to his Answer, I wish to go back now to the first charge, which has to do with the Hughes case which has just been received, and note that his Amended Answer is as follows, on page 1:

"Defendant admits that on the 8th day of October, 1945, he, as co-counsel with Milton R. Klepper, filed a complaint in this Court on behalf of one Marvin L. Hughes as plaintiff and against Alaska Steamship Company, a corporation, defendant, Civil No. 2923, and that thereafter said cause was prosecuted to a conclusion. Defendant further admits that he knew that one of the defenses which would be urged by said defendant corporation was that plaintiff's claim, if any, should be asserted against the United States of America. Defendant admits that by virtue of his employment as Assistant United States Attorney, he would have been without authorization to bring a suit against the United States of America."

The rest of it is in the form of an allegation. The third charge, on page 2, is:

"That on or about February 12, 1947, he of-

ferred to represent one Joseph Martin for a fee in connection with [11] proceedings to procure the release of certain wages earned by the said Joseph Martin which were deposited in the registry of the United States District Court at San Francisco, California, although said Joseph Martin was referred to him in his capacity as Assistant United States Attorney and such matters are customarily handled by United States Attorneys without compensation therefor.”

The Amended Answer admits only with regard to the said charge that on the 12th day of February, 1947, Joseph Martin was referred to him in his capacity as Assistant United States Attorney. There are other admissions, but they do not exactly meet the charge. Perhaps it would be well to read them now, from page 4 of the Amended Answer:

“Defendant admits that on or about February 12, 1947, one Joseph Martin was referred to defendant in his capacity as Assistant U. S. Attorney in connection with proceedings to procure the release of certain wages theretofore allegedly earned by the said Joseph Martin and which had theretofore been allegedly deposited in the registry of the U. S. District Court at San Francisco, California. Defendant alleges that at the time said Joseph Martin was referred to defendant”—well, that is in the form of allegations, so I don’t think we need to go any further on that.

The next charge, on page 2 of the Complaint, is:

“That on December 7, 1945, and on January 4, 1946, [12] he appeared in this Court as Assistant

United States Attorney, representing the United States of America in two criminal proceedings brought by the said United States of America against Eugene Russell Costello, being numbers 16714 and 16715, although he was then associated in the practice of law with Milton R. Klepper, who appeared in said proceedings representing the said Eugene Russell Costello, the Defendant therein."

The Answer admits everything except this language, "although he was then associated in the practice of law with".

In that connection, I would like to offer in evidence, at this time, the files bearing numbers 16714 and 16715.

(File bearing pleadings and other documents in cause entitled, in the District Court of the United States for the District of Oregon, United States of America, plaintiff, vs. Eugene Russell Costello, Defendant, No. 16714, and bearing Judgment Roll No. 24887, was thereupon marked for identification as Exhibit 3; and

(File bearing pleadings and other documents in cause entitled, in the District Court of the United States for the District of Oregon, United States of America, plaintiff, vs. Eugene Russell Costello, Defendant, No. 16715, and bearing Judgment Roll No. 24888, was thereupon marked for identification as Exhibit 4.) [13]

Mr. Green: If I may inquire from the Clerk, is this the complete roll in respect to the Costello case?

The Clerk: I believe so.

Mr. Green: Or from Mr. Dezendorf, either. I haven't any objection if it is not the complete roll,—I haven't examined them—but if they tell me it is the complete roll that is all I want to know, I haven't any objection.

Mr. Dezendorf: That is my understanding, that they are the complete rolls, from the Clerk.

The Court (Fee, J.): They will be admitted without objection, and if they are not complete rolls we will see that they are completed.

(The two files referred to, so offered and received, having previously been marked for identification, were thereupon marked received as Exhibits 3 and 4.)

Mr. Dezendorf: "That commencing on or about October 2, 1946, he represented that he was and held himself out as practicing law as a member of a partnership composed of Milton R. Klepper, McDannell Brown and himself, although he was not then and is not now a partner with Milton R. Klepper and McDannell Brown or with either of them."

With regard to this charge there is no admission in the Answer, although there are certain allegations there.

May I have these marked by the reporter as the next [14] exhibit.

(The documents referred to were thereupon marked for identification as Exhibit 5.)

Mr. Dezendorf: Will you hand it to Mr. Green. I offer that in evidence. It is for the purpose

of showing the letterhead on the letters and the billing.

Mr. Green: What is the object of this? That they use the letterhead of Klepper, Brown & Patterson?

Mr. Dezendorf: Klepper, Brown and Patterson.

Mr. Green: Klepper, Brown and Patterson.

Mr. Dezendorf: Letterhead and billhead.

Mr. Green: Letterhead and billhead. We admit that, your Honor.

Mr. Dezendorf: You allege it. You do not admit it.

Mr. Green: Well, I understand an attorney's allegation is an affirmative fact and that constitutes an admission of that particular thing.

The Court (Fee, J.): Is that your only objection?

Mr. Green: Well, my other objection to it, your Honor, is this, that these documents submitted to me are matters that came to the office of Hampson, Koerner, Young & Swett in matters relating to personal things in litigation between Klepper and the office with which Mr. Dezendorf is associated. Now, I think they have no relation or bearing upon this case, except that the letterheads bear the names of Klepper, Brown [15] and Patterson, but I see no reason why Mr. Dezendorf should be able to go into his files in personal matters and bring up personal things that have no relationship to any charge, and I don't think he has any right to bring up to Mr. Patterson any personal dealings with their office. I don't think it is proper. We admit in our answer that

they used the letterheads of Klepper, Brown & Patterson. I see no reason why an attorney that has come into possession of certain documents in matters in litigation between the two should bring those matters out before a court.

The Court (Fee, J.): Well, there is this about it, that it does show that there was a course of business. Now, the mere fact that the names might be used on letterheads and billheads might not mean much, but that it was used in the course of certain business, transaction of certain business, between certain firms in town, I don't care whether it was Mr. Dezendorf's firm or some other firm.

Mr. Green: Your Honor, we admit it was used on letterheads, billheads, and it is on the door, an assumed name was filed. We admit all that.

Mr. Dezendorf: It isn't admitted in the answer. It is set up in the form of an allegation.

Mr. Green: Well, I don't get the distinction between an affirmative allegation on our part—we are bound by it, is my understanding of the pleading, and we allege it and we state [16] it very firmly and very positively. Now, my only objection to this is that it is taking facts and things of a personal nature that came to them in that relationship and they bring it in here and it has no bearing in this case at all, and everything included in it we admit.

The Court (Fee, J.): All right, the Court will exclude it, and, based upon that, I take it that there is an admission there, that you admit the charge in that connection?

Mr. Green: Now, we admit that we used that name, but we are certainly not admitting that there is anything unethical or violating any kind of ethics in doing so.

The Court (Fee, J.): No, I am not trying to trap you. I am not asking you for any admission beyond what you have set out affirmatively, but I want this as an admission so far of the charge.

Mr. Green: Yes, we do.

Mr. Dezendorf: I also have files of this Court Nos. 3170, 3665, 3511,—

Mr. Green: Is that 3511?

Mr. Dezendorf: Right,—3651, 3658, which I will offer for the purpose of showing that the firm or the designation “Klepper, Brown & Patterson” appears on the pleadings in each of those cases.

Mr. Green: I want the Court to know that, while I haven't seen the files at all, but I am just assuming that Mr. Dezendorf's statement is correct that it does bear the name of Klepper, [17] Brown & Patterson, and, Mr. Dezendorf saying that is true, I have no objection to admitting the files, because we frankly admit that there are files in the Circuit Court of Multnomah County and in other courts bearing that name on legal documents. There is no question about that at all. We admit that in our Answer.

The Court (Fee, J.): In view of the fact that

these are public records, the Court will admit them.

Mr. Green: We may have time to look at them?

The Court (Fee, J.): Yes, surely.

Mr. Green: Well, I guess we might do that later on. We will do that later, your Honor. We haven't any objection.

The Court (Fee, J.): They may be marked later—or you can mark them now, if you will.

(The files referred to, so offered and received, were thereupon marked as follows:

(File containing pleadings and documents, in the District Court of the United States for the District of Oregon, Albert C. Odem, et al., Plaintiffs, vs. Underwriters at Lloyd's, London, Defendants, No. Civil 3170, bearing Judgment Roll No. 25381, was marked received as Exhibit 6;

(File containing pleadings and documents, in the District Court of the United States for the [18] District of Oregon, Allen Lamb, Administrator of the Estate of Isadore Allen Lamb, Deceased, Plaintiff, vs. New York Casualty Company, a corporation, Defendant, No. Civil 3651, was marked received as Exhibit 7;

(File containing pleadings and various documents, in the District Court of the United States for the District of Oregon, entitled Alberta D. Williamson, Administratrix of the Estate of Gilbert D. Williamson, Deceased, Plaintiff, vs. Southern Pacific Company, a corporation, Defendant, Civil No. 3665, bearing Judgment Roll No. 25830, was marked received as Exhibit 8;

(File containing pleadings and other documents, in the District Court of the United States for the District of Oregon, entitled Anna V. Ritch, Plaintiff, vs. Union Pacific Railroad Co., a corporation, Defendant, No. Civil 3658, was marked received as Exhibit 9; and

(File containing pleadings and other documents, in the District Court of the United States for the District of Oregon, entitled Evelyn N. Robbins, Plaintiff, vs. Frank P. Busch, Defendant, No. Civil 3511, bearing Judgment Roll No. 25702, [19] was marked received as Exhibit 10.)

Mr. Dezendorf: May I have this marked as Exhibit 11.

(Photostatic copy of check, drawn on Main Branch, The First National Bank of Portland, No. 2448, April 28, 1947 Klepper, Brown & Patterson to Clerk, U. S. District Court, in the amount of \$15.00, so produced, was thereupon marked for identification as Exhibit 11.)

Mr. Green: There is no objection.

Mr. Dezendorf: That is number 11.

The Court (Fee, J.): Admitted.

(Said photostatic copy of check, so offered and received, having previously been marked for identification, was thereupon marked received as Exhibit 11.)

(Certified photostatic copy of Assumed Business Name Certificate of Klepper, Brown & Patterson, executed October 2, 1946, was thereupon produced and marked for identification as Exhibit 12.)

Mr. Green: No objection.

The Court (Fee, J.): Admitted.

(Said certified photostatic copy of Assumed Business Name Certificate, so received, was thereupon marked received as Exhibit 12.)

Mr. Dezendorf: Did I understand your former statement [20] correctly, Mr. Green, that it is conceded that the door of the office in the Yeon Building bears on the outside, facing the hall and the elevators, "Klepper, Brown & Patterson, Attorneys at Law", with the names "Milton R. Klepper, McDannell Brown" and "J. Robert Patterson"?

Mr. Green: That is correct, and that is not only on the door of the entrance to the office but I think the names, "Klepper, Brown & Patterson" appear on the other doors that face the hall.

Mr. Dezendorf: And also on the registry in the lobby of the building?

Mr. Green: I haven't seen it there, but Mr. Patterson tells me that is correct and we will admit it, "Klepper, Brown & Patterson".

Mr. Dezendorf: "& Patterson". I have one witness I would like to call. It is Mr. Martin. He is down in Mr. Cochran's office, awaiting call.

The Court (Fee, J.): Well, I think perhaps—Do you want to call him before noon?

Mr. Dezendorf: Whatever you wish.

The Court (Fee, J.): I think if you have completed your documentary——

Mr. Dezendorf: Well, he has another exhibit, which is the only one.

The Court (Fee, J.): How long will that take?

Mr. Dezendorf: On cross examination it might take some [21] while.

The Court (Fee, J.): In view of that, the court will recess until 2:00 o'clock.

(Whereupon, at 12:02 o'clock p.m., Friday, December 19, 1947, a recess was had until 2:00 p. m.) [22]

Afternoon Session, 2:00 p. m.

Mr. Green: If it please the Court, and Mr. Dezendorf, Mr. Klepper is coming into the courtroom to testify. Mr. Klepper is not well and I talked to him yesterday for the first time since he had his trouble, but he will be here; but I just want the privilege and want Mr. Dezendorf's permission that when he does come and knock on the door that we put him on the witness stand and not have him waiting around in the hall there.

The Court (Fee, J.): I shall be very glad to do that, Mr. Green, any time.

Mr. Green: He said he would be here, Mr. Dezendorf, sometime about 2:30, so I would like that privilege.

The Court (Fee, J.): This not being a proceeding where we have to maintain discipline, we will put him right on, in the middle of another witness' testimony.

Mr. Dezendorf: Shall we proceed?

The Court (Fee, J.): Yes.

Mr. Dezendorf: Mr. Martin, will you step forward.

JOSEPH GERALD MARTIN

was thereupon produced as a witness and was examined and testified as follows:

The Clerk: Will you state your full name, please. A. Joseph Gerald Martin.

(The witness was then duly sworn.) [23]

Direct Examination

By Mr. Dezendorf.

Q. Your name is Joseph Martin?

A. Yes.

Q. And where do you live?

A. I live at 1208 Northeast 8th. I have just changed addresses recently.

Mr. Green: I didn't get it, please.

A. 1208 Northeast 8th. I have just changed addresses recently.

Q. (By Mr. Dezendorf): Do you remember an occasion when you went in to talk to Mr. Patterson in the United States District Attorney's office? A. Yes.

Q. What was the occasion for you going there?

A. Well, I had some back money coming from the Merchant Marines that they had tied up in the court in San Francisco and two suitcases full of clothes.

Q. How did you happen to go in to see Mr. Patterson?

(Testimony of Joseph Gerald Martin.)

A. I was referred to him by Mr. McFarland.

Q. And who is Mr. McFarland?

A. He is Chief Probation Officer. I happen to be on parole right now and I am under Mr. McFarland. That is the reason I was referred to him by Mr. McFarland.

Q. Now, can you tell us, just as best you recall it, what the conversation was that you had with Mr. Patterson when you [24] went into his office?

A. Well, I asked him about if I could get them made out from here to get my money instead. He had advised me that it would be better to go to 'Frisco, but I told him that I didn't want to go to 'Frisco, because by the time I went to 'Frisco and paid for all my expenses down and back I figured it would be just as cheap to have the papers made out here and sent down.

Q. How much money was on deposit in the Clerk's office in San Francisco?

A. One thousand seventy-six dollars, and there was a few odd cents; I forget what the odd cents was.

Q. What did Mr. Patterson say about it?

A. Well, after he advised me to go down there, I said I would rather not. He said well, he would see what he could do for me, and he offered me to come down to the office when he give me this card that I have in my pocket now.

Mr. Dezendorf: Will you give the card to the Clerk, please. Will you have it marked.

(Testimony of Joseph Gerald Martin.)

(Said business card of J. Robert Patterson, so produced, was thereupon marked for identification as Exhibit 1.)

Mr. Dezendorf: I would like to offer that.

Mr. Green: I would like to make an inquiry before—it is marked for identification. I notice that there is another mark on it, “Exhibit 1, CDR”. [25]

Mr. Dezendorf: I can explain that, Mr. Green. Mr. Martin’s statement was taken on February 20, 1947, before the Committee, with Mr. Rauch acting as the reporter. His notes were taken but were not transcribed. That explains the mark on the exhibit.

Mr. Green: May I make inquiry, were all of the proceedings that were held at that time, were the notes taken of them, or just Mr. Martin’s?

Mr. Dezendorf: The only thing that was taken was Mr. Martin’s statement.

Mr. Green: We would make a request at this time of the Court—I want to say to the Court that I have inquired as to whether or not the notes were taken at the hearing and I have been told that they were not, by Mr. Patterson, not taken down, and I would make a request of the Court at this time and of the court reporter that we have the testimony transcribed that Mr. Martin gave before the Committee on February 20, 1947.

Mr. Dezendorf: No objection from our standpoint.

(Testimony of Joseph Gerald Martin.)

The Court (Fee, J.): Have you got the transcript?

Mr. Dezendorf: Never been transcribed.

The Court (Fee, J.): I have no objection, but then if you want to have the reporter produce it for you—

Mr. Green: I do not intend to insist upon the reporter producing it now or stop this proceeding. I simply make the request now that they be transcribed before this proceeding is finally terminated, so that they can be before the Court. I [26] will take care of the charges, so far as the expense is concerned. I will take care of that.

The Court (Fee, J.): That is what I say,—Mr. Dezendorf consents, and you make a deal with the court reporter and have him transcribe it.

Mr. Green: There is no objection, with that understanding.

The Court (Fee, J.): Admitted.

(The card referred to, so offered and received, having previously been marked for identification, was thereupon marked received as Exhibit 1.)

The Court (Fee, J.): I thought, perhaps, for the purposes of cross examination, you would like to have the notes read to you before you have to cross examine, Mr. Green.

Mr. Green: Well, it had occurred to me, your Honor, that it might be necessary for us to recall this witness at some time, because I would like to read those notes before I complete my cross examination. I intend to go ahead with the cross-examination. It may not be necessary to call

(Testimony of Joseph Gerald Martin.)

him, because I don't want to postpone this proceeding at all, I don't want to delay it, but I thought if in due season we would have a copy of the transcript we might then make request of the Court in proper form that this witness be recalled for cross examination, if we deem it necessary.

Mr. Dezendorf: I may say, Mr. Green, that the notes are very short. It will take only two or three minutes to have [27] them read.

Mr. Green: Okeh, that will be fine.

Mr. Dezendorf: I haven't completed my direct examination.

Mr. Green: I understand.

The Court (Fee, J.): As soon as the direct examination is completed the Court will recess and have the reporter get his notes and read them. Proceed.

Q. (By Mr. Dezendorf): Was anything said about you seeing another attorney?

A. Yes, I said that I would let him know if I would come back, because I would go and see my brother's attorneys.

Mr. Green: I can't quite hear, please.

The Court (Fee, J.): Speak up.

A. I did refer that I would probably go to see my brother's lawyers and I would let him know later what I was going to do, whether I would have him go ahead with the papers or what.

Q. (By Mr. Dezendorf): Now, you said a minute ago that he said to have you come down

(Testimony of Joseph Gerald Martin.)

to the office. Was that the office mentioned in your card?

A. I imagine it was, because that was the office in the card he gave me.

Q. Was anything said about the amount that would be required in attorney's fees to accomplish this?

A. He said approximately a hundred and seventy-five. There was no set price. [28]

Q. Did you see him again after that?

A. No, sir.

Mr. Dezendorf: That is all the direct examination.

Cross Examination

By Mr. Green:

Q. Mr. Martin, you say you are on parole?

A. Yes, sir.

Q. Out of this court? A. No, sir.

Q. What court?

A. I was tried overseas by the Army and I was sentenced to El Reno, Oklahoma, and I was paroled to Superior, Wisconsin, then I was transferred here.

Q. And what was the charge that you were convicted of?

A. For armed robbery with intentions of doing bodily harm.

Q. And that was while you were in the merchant marine? A. Yes, sir.

Q. And where was your trial?

A. In Brisbane, Australia.

(Testimony of Joseph Gerald Martin.)

Q. And what was the sentence that was imposed on you? What number of years, I mean?

A. Four years and \$500 fine, but it was cut; one year was cut off, and the fine was remitted.

Q. And isn't it a fact, Mr. Martin, that you told Mr. Patterson [29] that you couldn't go to San Francisco because you had been paroled and you had to stay within the state of Oregon?

A. No, I could have went with the permission of Mr. McFarland and Mr. Cochran.

Q. No, but my question is, didn't you tell Mr. Patterson that you couldn't go because you had to stay within the state of Oregon?

A. I don't recall telling him anything like that.

Q. You don't recall telling him that? Didn't Mr. Patterson tell you that the only way that you could get your money would be to go to San Francisco, or to employ some lawyer in San Francisco?

A. He said that would be the easiest way to get it, was to go right up and appear in court in 'Frisco.

Q. Didn't he also tell you that you would have to testify in court with respect to the matter?

A. Not that I recall.

Q. Not that you recall. And tell me again the statement you made to him as to why you didn't want to go to San Francisco.

A. Well, I figured it would cost me more money to go to 'Frisco and pay for a hotel and everything than it would if I were to employ a lawyer up here some place, but in my opinion I thought

(Testimony of Joseph Gerald Martin.)

that Mr. Patterson was supposed to do it free of charge.

Q. I see. [30]

A. That is why I told him to wait, that I would see another attorney.

Q. Now, who had told you that, that Mr. Patterson was supposed to do it free of charge?

A. Nobody told me that.

Q. How long have you been going to sea?

A. Well, I started in December of 1942 and was——

Q. After the war started?

A. Yes, and I sailed until December of '44, when I was tried overseas.

Q. Now, what is your brother's name that you refer to that had a lawyer in town?

A. Matthias Martin.

Q. And who was his lawyer?

A. I didn't even know at the time, but I know he has one, because he had an accident and he went down to see a lawyer about it.

Q. Did you go see him with respect to your money?

A. No, sir, I didn't go see him.

Q. Did you get your money finally?

A. Yes, sir.

Q. And through an attorney? A. Yes, sir.

Q. Some attorney here?

A. In Portland, yes, sir. [31]

Q. Who was the lawyer that you employed?

A. William Langley.

Q. William Langley; and you didn't go to San Francisco? A. No, sir.

(Testimony of Joseph Gerald Martin.)

Q. Now, the question with respect to a fee or whatever charge was made, isn't it a fact that what you asked Mr. Patterson was what he thought a lawyer would charge you? Isn't that what you asked him?

A. Approximately how much it would cost to get it.

Q. Yes; and he said that in his opinion it would probably cost about \$175, is that right?

A. Well, I was more or less asking him on his part how much it would cost.

Q. Just answer my question, please. Isn't it a fact that that is what you asked him and that is what he told you?

A. That is what he told me.

Q. Yes. A. Yes.

Q. And that is what you were trying to find out, what your approximate cost would be?

A. Yes.

Q. And it did cost you an attorney fee, didn't it?

A. It did cost me an attorney fee, but I had a set fee when I got it.

Q. I see. Didn't Mr. Patterson also tell you that if the [32] money were with the Clerk of this Court then he would be of assistance to you, but that he couldn't go to San Francisco?

A. I don't recall whether he said it that way or not.

Q. You have told the Court here approximately the same thing you told the Committee in February of '47, have you? A. Yes, sir.

Q. What are you doing now?

(Testimony of Joseph Gerald Martin.)

A. Working for Piggly Wiggly's.

Q. Piggly Wiggly? A. Yes.

Q. Mr. Martin, let me refresh your memory a little on this and see if this isn't, generally, in substance, what happened and what the conversation was,—that Mr. Patterson first told you that in his opinion the best thing for you to do was to go to San Francisco?

A. Yes, he did say that.

Q. All right; then when you told him you didn't want to go to San Francisco he said, well, then the next best thing to do is to get an attorney; is that right? A. Yes.

Q. And he inquired of you as to whether or not you had an attorney and you told him you didn't have but your brother did; is that right?

A. That is right.

Q. And he then told you to go see your brother's attorney, [33] didn't he?

A. Not that I recall?

Q. Beg your pardon?

A. Not that I recall, he didn't tell me to.

Q. Well, didn't he suggest to you that you see your brothers' attorney?

A. No; I think I was the one who suggested that I see my brother's attorney.

Q. All right, you suggested that, and then he told you that if you didn't get satisfaction in one of these ways to come down to his office, is that right?

A. Well, I don't recall whether it was said in that manner or not.

(Testimony of Joseph Gerald Martin.)

Q. And that Mr. Patterson finally concluded by saying he would see what he could do for you; is that right? A. Well, in a way, yes.

Mr. Green: I think that is all. No, just a minute. I wanted to ask you one more question. Where were you charged with having deserted the ship?

A. That was in Brisbane, in September of '44. I missed the ship in Brisbane, Australia. That is where I had that money coming from. But I was taken up in front of the Coast Guard over there, and they give us six months probation. In other words, if I missed another ship in six months my seaman's properties would be taken from me, and I was put on another [34] ship by the Coast Guard over there.

Q. What was the occasion of your having missed the ship the first time, when you were put on this probation?

A. Three of us went down the beach, with the steward's permission, and when we came back the ship was gone.

Q. And that was why you had this money coming?

A. Yes, that was back money I had coming off of that ship that I missed.

Q. The Captain filed charges against you that you were a willful deserter, didn't he? Weren't those the charges filed?

A. Yes, that is what he filed when he went to San Francisco, but we was tried for it in Brisbane, Australia.

(Testimony of Joseph Gerald Martin.)

Q. But you wrote to the Captain and tried to get him to change that and he wouldn't do it?

A. I wrote to the Clerk of the court first and the Clerk said I would have to write to the Captain, and I wrote to the Captain about it.

Q. And the Captain said no, you were a willful deserter, is that right?

A. That is what he said.

Mr. Green: I think that is all.

The Court (McColloch, J.): Let's have Captain Rauch read his notes to you now, if you want to hear them, Mr. Green. He said he could read them to you in three or four minutes.

Mr. Green: Well, I would like to have this witness excused [35] from the room while they are being read, your Honor.

The Court (McColloch, J.): All right, go on out of the room.

(Witness excused.)

The Court (McColloch, J.): Have him stay right there in the hall.

(The reporter thereupon read to the Court and counsel the oral examination, on February 20, 1947, of the witness Joseph Martin before the Committee on Discipline to the Bar of the United States District Court.)

Mr. Green: I don't think that I desire to recall the witness for cross examination, but I do make request that this transcript of Martin's testimony read by the reporter be transcribed and introduced

in evidence and let it come in as a defendant's exhibit.

Mr. Dezendorf: No objection.

The Court (Fee, J.): You make your arrangement with Mr. Rauch and it may be put in evidence.

(The reporter thereafter transcribed his said shorthand notes of said examination of the witness Joseph Martin before the Committee on Discipline to the Bar of the United States Court on February 20, 1947, and said transcript was marked Exhibit 13.)

Mr. Dezendorf: May I tell the witness he can be excused? [36]

Mr. Green: Yes.

Mr. Dezendorf: Just one more matter that I think is not covered by the record thus far made. In our allegation we charge that Mr. Patterson represented and held himself out as practicing law with Milton R. Klepper, McDannell Brown and himself, although he was not then and is not now a partner with Milton R. Klepper, McDannell Brown, nor either of them. I do not at the moment have any proof of that. However, it can be proven through Mr. Klepper. Is there any objection, or does the Court have any objection, to proving that matter when Mr. Klepper comes? Otherwise, I am ready to rest.

Mr. Green: Well, I don't get exactly what you are driving at. You want to prove that Mr. Patterson held himself out as a partner by Mr. Klepper? I don't get you.

Mr. Dezendorf: No, it doesn't have anything to do with holding himself out. It is the fact that no partnership exists.

Mr. Green: I think, Mr. Dezendorf, because there is going to be a contention—in our answer we very definitely put you on notice as to what our contention is in that regard. It is going to be our contention that that statement is entirely erroneous. There is no suggestion there that there is a special or limited partnership.

Mr. Dezendorf: All I am trying to prove is that no partnership existed at this moment.

Mr. Green: I understand that, but we contend that no [37] partnership existed.

Mr. Dezendorf: I have asked you if you would mind my putting on that portion of my case with Mr. Klepper?

Mr. Green: I have no objection to your withholding a portion of your case, if that is what you are talking about, withholding your case, so that we can go forward.

Mr. Dezendorf: That is all I am talking about.

Mr. Green: All right, I have no objection to that.

Mr. Dezendorf: That is all we have at this time—oh, one more thing. Several weeks ago I compiled the opinions of the Committee on Professional Ethics and Grievances of the American Bar Association having reference to each of these charges and gave a copy to Mr. Green. I have two other copies, one of which I would like to use during the hearing for myself and then I can pass it up with this one for the Court.

The Court (Fee, J.): The Court will treat that as a brief.

Mr. Green: Not being received as any evidence, as I understand it.

Mr. Dezendorf: No.

The Court (Fee, J.): No, the Court receives it as a brief.

Mr. Green: Now, may it please the Court, on page 7 of our answer I want to add one word in line 24—two words, in fact. I am sorry I didn't file two answers with this Court. It didn't occur to me that it was going to be a two-judge court, and it didn't occur to me—I knew it, but it didn't occur to me that [38] I should file two answers. The sentence in line 24 reads “that defendant always considered himself a quasi- or limited”—“or special”—I want to add those two words “or special”.

Mr. Dezendorf: No objection.

The Court (Fee, J.): I will just write it in.

Mr. Green: There is one other correction that I want to make. On page 3 of the Answer, line 1, appear the words “although he expected to be called as a witness at the trial.” I want those words stricken from the Answer, because it does not conform to the facts, and I ask leave of the Court that our Answer be amended in that particular. I don't ask leave to file an amended answer complete, but that line, just a pen mark be drawn through it.

The Court (Fee, J.): Any objection?

Mr. Dezendorf: No objection.

Mr. Green: Now, your Honor, before I pro-

ceed with the case for the defense here, when Mr. Dezendorf read the Complaint he read a certain portion of the Answer that we had filed and he failed to read the affirmative allegations of the Answer, and I think possibly I waived the right to do that by not insisting upon it at the beginning of the proceeding, but I did not know whether I should do it at that time; but I at this time want to read the Answer, with the Court's permission, unless your Honors have both read it. Now, if you have, I am not going to take up time, but I would like to read his answer as to the affirmative allegations, so with the testimony that we produce the Court will have that in mind with respect to the Answer and what we have alleged in the Answer.

The Court (Fee, J.): I may say that, although we are sitting en banc, I am treating this as though I were trying it on my own personal responsibility. I have read the answer.

Mr. Green: Well, may I inquire as to whether Judge McColloch has read the answer.

The Court (McColloch, J.): Yes, I read it yesterday afternoon.

Mr. Green: All right, that is all that I want to know, because——

The Court (Fee, J.): At this time, having made this amendment that you requested, in striking that out, I now direct that the Answer be introduced in evidence as it was prior to marking it.

Mr. Dezendorf: Might I suggest, also, that the earlier answer be introduced, too.

(Answer of J. Robert Patterson to the Amended Complaint, filed December 17, 1947, so received, was thereupon marked received as Exhibit 14.)

Mr. Green: I haven't any objection to introducing the first Complaint, the second Complaint, and having all of them go in. I have no objection to them all going in.

The Court (Fee, J.): All right, simply introduce all the [40] pleadings.

Mr. Green: All the pleadings go in.

(The following documents, so received, were thereupon marked as follows:

(Complaint in Disciplinary Proceedings, in the District Court of the United States for the District of Oregon, entitled United States of America, plaintiff, vs. J. Robert Patterson, defendant, filed March 12, 1947, was marked received as Exhibit 15;

(Amended Complaint in Disciplinary Proceedings, In the District Court of the United States for the District of Oregon, entitled United States of America, plaintiff, vs. J. Robert Patterson, defendant, filed April 16, 1947, was marked received as Exhibit 16;

(Answer, in the District Court of the United States for the District of Oregon, entitled United States of America, plaintiff, vs. J. Robert Patterson, defendant, filed May 9, 1947, was marked received as Exhibit 17; and

(First Amended Complaint in Disciplinary Proceedings, in the District Court of the United States for the District of Oregon, entitled United States of America, plaintiff, vs. J. [41] Robert Patterson, defendant, filed December 4, 1947, was marked received as Exhibit 18.) [42]

J. ROBERT PATTERSON

was thereupon produced as a witness on his own behalf and was examined and testified as follows:

The Clerk: Your name is J. Robert Patterson?

A. Yes, it is.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Green.

Q. Your name is J. Robert Patterson?

A. Yes, it is.

Q. Where do you reside, Bob?

A. 1717 Park Avenue, Milwaukie, Oregon.

Q. Who long have you lived in Oregon?

A. I have lived in Oregon all my life.

Q. Born here?

A. Yes, I was, in Hillsboro.

Q. And married or single?

A. I am married.

Q. Any children?

A. Yes, I have one child.

Q. How old? A. Sixteen months.

Q. And you are admitted to practice law?

A. Yes, I am.

Q. And when? [43]

A. In 1941, in September.

(Testimony of J. Robert Patterson.)

Q. And what had you done before you took up the study of law?

A. Well, after I graduated from Hillsboro High School I went to Pacific University for one year and then I went to the University of Oregon for one year, and during the summer months I secured a position in the First National Bank of Portland out at Hillsboro and I began work there as a bookkeeper and went to Northwestern School of Law at night, and during the time that I studied at Northwestern I worked in the First National Bank of Portland at Hillsboro, and also at numerous branches here in Portland, and graduated from Northwestern in May of 1941 and took the bar exams in July of that year, and then I continued to work in the bank until January 1st, of 1942 and at that time I went to work as a Claim Representative of the Mutual Life Insurance Company of New York and I worked with them until March of 1943, at which time I entered the United States Maritime Service and I was——

Q. Served with them how long?

A. Pardon?

Q. Served with them how long?

A. I served with them until October of 1944, at which time I became associated in the practice of law with Mr. Klepper.

Q. And did I ask you your age? How old are you?

A. I am thirty.

Q. Now, you went to Hillsboro High School?

A. Yes, I did.

(Testimony of J. Robert Patterson.)

Q. You were born in Hillsboro, on a farm?

A. No, in the city.

Q. And what was your father's business?

A. My father was a bricklayer.

Q. And other brothers or sisters?

A. One brother and one sister.

Q. Older or younger?

A. Both of them are older than I am.

Q. Now, when you became associated with Mr. Klepper, what date did you say that was?

A. That was in October, 1944.

Q. That was in the Yeon Building?

A. Yes, it was.

Q. Let's come down to the specific complaints that have been made against you here. Did you file a proceeding on behalf of Hughes?

A. Yes, I did.

Q. Against the Alaska Steamship Company?

A. Yes.

Q. Was Mr. Klepper co-counsel?

A. Yes, he was.

Q. Was the matter tried in court?

A. I didn't get the question.

Q. I say, was the matter tried in court? [45]

A. Yes, it was.

Q. A jury or court proceeding?

A. It was a court proceeding. There was no request for a jury trial.

Q. When you filed that case were you Assistant United States Attorney?

A. Yes, I was.

(Testimony of J. Robert Patterson.)

Q. And when were you appointed Assistant United States Attorney?

A. May 21, 1945.

Q. And are you still Assistant United States Attorney? A. Yes, I am.

Q. Now, Mr. Patterson, it is alleged in this complaint here that you knew that one of the defenses that would be urged by the defendants was that the plaintiff's complaint should be served against the United States of America.

A. Well, that was one of the defenses that was raised in the answer, all right, by the other attorneys.

Q. You filed this case against the Alaska Steamship Company in good faith? A. Yes, I did.

Q. And did you represent Hughes in good faith?

A. Yes, I did.

Q. And the decision in that case was adverse?

A. Yes, it was.

Q. Now, let me ask you the question, because this involves [46] an attorney in the matter, were you familiar at that time with a decision of the Oregon Supreme Court in the Hust case? I mean in your reading of the law, so as to advise you, did you have that before you?

A. I think the Hust case was decided either before or during or after my complaint was filed, I am not just certain, but sometime during the proceedings I did know of the Hust case and had read it and was familiar with the decision, but I am not just certain as to when that was handed down, as to whether it was before or during or after I had filed the complaint.

(Testimony of J. Robert Patterson.)

Q. Were you familiar with the Brady case?

A. Yes, I am.

Q. And the Quinn vs. Southgate Navigation Co. case?

A. Yes. I believe I prepared a brief in which those cases were given attention.

Mr. Green: I don't know, your Honor, as to how far we should go in questioning him with respect to the law in this situation. We are all lawyers in this courtroom, and I don't know just how far we should go in respect to legal questions, or whether that is only a matter for argument. I don't know what the procedure is.

The Court (Fee, J.): Well, there isn't any procedure, particularly, Mr. Green. You develop your case as you wish to and so far as you wish to go. The particular question to be decided is not a question of law. It is a question of [47] attitude and the ideas of the defendant.

Mr. Green: I think on this first count, your Honor, if I might be permitted to say so, that that particular count is largely a matter of law,—I mean, the way I look at it. Your Honors may disagree with me entirely.

The Court (Fee, J.): It is not, however, a question of law, Mr. Green, because that is not what we are trying. We are not trying the law of that case, except if a person took an absolutely unfounded position, that would be the only question involved.

Mr. Green: Let me state to your Honors just exactly what I have in mind,—and I know that

(Testimony of J. Robert Patterson.)

the question of good faith, as to whether or not he gave his client good representation, or whether or not he was honest and conscientious in dealing with his client, I know that is involved in this particular case, and I just want to say this,—where I think the question of law comes into it—in the Hust decision Judge Black held that the general agent was employed as an operator *pro hac vice*, which means that you are liable for your own torts. It was decided June 10, 1942. Now, under that ruling, where they held a special concurring opinion, what was done in this case where Hughes sued the Alaska Steamship Company, in my judgment, would be the thing that every lawyer should advise his client to do, according to Justice Black's and Justice Douglas' ruling. [48]

Now, in the case decided in June, 1944, the Caldarola case, which was a 5-to-4 decision, they still adhered to the position taken by Justice Black and Justice Douglas in the Hust case, but the five decided no, that was not right.

The point I am getting at is simply this, that here we have a situation where, according to four judges of the Supreme Court of the United States, or, very affirmatively, three of them, Black, Douglas and Murphy, what this man did was the advice that should have been given to his client. No, five of the Judges of the Supreme Court say, that is wrong, they can't hold that way. So that is just the point I raise with respect to the Hughes case and the charges here, that are that he could

(Testimony of J. Robert Patterson.)

not represent the plaintiff against the United States of America. We admit he could not do that, but he could represent the plaintiff, under what Black, Douglas and Murphy said, and that is exactly what he did.

The Court (Fee, J.): I will tell you right now what my attitude is,—that a lawyer who is representing the United States has to deal very carefully with the situation, and he has to not only take into consideration what is held by the courts but what may be held.

Mr. Green: Well, I agree with your Honor, but the point that I make is that, to me, if the man makes a mistake of judgment,—and that is exactly what we have said in the answer, that he made a mistake in judgment, that it was not part of his [49] consciousness or mind in any attempt to deceive—it is a pretty hard rule for the lawyers, even whether he represents the United States or not, when we have to speculate and agree on what the courts are going to determine; it makes it a very hard test.

The Court (Fee, J.): I am very firm in that conviction, that a lawyer representing the United States of America shouldn't get himself in a situation where he is representing an interest which is opposed to the United States of America, under any possible decision that should be rendered by any court.

Mr. Green: And I state that what he was trying to do at that time was to establish a liability against the Alaska Steamship Company, which

(Testimony of J. Robert Patterson.)

would be a complete defense in as far as the liability of the United States of America is concerned.

The Court (Fee, J.): Well, as I say, I do not view it as a question of law at all.

Q. (By Mr. Green): Mr. Patterson, during the time that you were representing Hughes did you act, with respect to Hughes, in good faith?

A. I never at any time felt that I was doing otherwise.

Q. Did you do so with respect to the United States of America? A. Yes, I did.

Q. And was it ever suggested to you or did it ever occur to you that there was any impropriety with respect to representing Hughes in the case of the Alaska Steamship Company? [50]

A. Not by anyone.

Q. And when you asserted this claim against the Alaska Steamship Company was it your thought—or state whether or not it was your thought that you were protecting the United States of America?

A. Well, yes, I did.

Q. Mr. Patterson, in those cases, while you were here as Assistant United States Attorney,—or active, I am talking about now—in the defense of those cases, what was your observation of who appeared in the defense of those cases?

A. The defenses were all carried on by private insurance carrier attorneys. We did not appear in them. That was another reason why I felt that there could not be any conflict in interest, where private attorneys are conducting the defense.

Q. With respect to your representation of Mr.

(Testimony of J. Robert Patterson.)

Bowden, I want you to tell the Court when you first became acquainted with Mr. Bowden?

A. Well, I became acquainted with Mr. Bowden about a little over a year before the time he was placed in jail. His brother, or cousin, who is a very distant relative of mine,—they had a fishing boat down at Newport and wanted me to arrange for powers of attorney and a transfer of interest in the vessel so they could procure some documents, and I prepared those papers for them. And then on another occasion they transferred the interest again, so it required a redocumentation of the [51] vessel and I also prepared those papers for them. That was about seven or eight months later. And then along about in May Mr. Bowden came in my office one day with a divorce complaint that his wife had filed against him——

Q. May of what year?

A. That would be May of 1946,—and told me that he did not want his wife to have a divorce if there was any way to prevent it. One of the reasons was because of his religion, and some other facts that he told me about. After he had told me about the situation there in regard to his wife and his home, I felt that he might have a good defense to the divorce suit and so advised him, and he authorized me to file an answer in his behalf, which I did, and——

Q. Now, that was in the Circuit Court of Multnomah County?

A. That was in the Circuit Court of Multnomah County.

(Testimony of J. Robert Patterson.)

Q. All right.

A. And then upon three or four different—about three different occasions during the pendency of this divorce case he came to my office and discussed with me the merits of the divorce case and the facts surrounding it and some of his difficulties at home. And then on the day before he was arrested he came about eleven o'clock in the morning and told me he was going to Newport to see about the fishing vessel and I think told me that, if possible, he was going to go out fishing, he thought maybe that would clear up matters at home [52] while he was gone, and told me if anything come up I could reach him in the Abbey Hotel at Newport. And then Sunday morning I got the papers that had a report in it about his wife's death.

Q. You mean the newspapers?

A. I mean the newspapers. So I called the Police Station at the time and told them that I represented Mr. Bowden and told them if he came in there to call me, that I wished to arrange bail for him; and I didn't receive any call, so I went down there, and at that time one of the jailers told me that they wished me to not see him, as he hadn't seen the papers and didn't know anything about his wife's death, and I told him I would do that. About eleven-thirty I received a call from the Police Station telling me that they thought if I would come down and talk to him he would give me a statement. They let me see him alone, and he told me what the facts were

(Testimony of J. Robert Patterson.)

and I then told them I thought he would give Mr. Handley a statement, and after he gave them a statement a first-degree murder charge was filed against him, and he or his relatives asked me to represent him, and I told him at that time that I was up here and I couldn't give it the time that it would require and told them they had better get someone else to assist me, and a couple of days afterward I procured the services of Mr. Edwin Hicks and from then on he handled it, although I did assist him. I interviewed some of the witnesses and interviewed Mr. Bowden, and I also [53] sat in on the trial in the Bowden case. It was tried in the Circuit Court of Multnomah County.

Q. Were you there all during the trial?

A. No, I wasn't there during the entire trial.

Q. Now, with respect to your duties in the United States Attorney's office, what did you do with respect to those duties while you were on the Bowden trial?

A. While he was on trial I took a leave of absence from the United States Attorney's office. It was charged against my annual leave.

Q. Did you participate in the trial?

A. I did cross examine Mr. Schaefer, at the request of Mr. Hicks, when a certain conversation that he testified occurred and I was the only one present, and then Mr. Hicks also cross examined him, and that is the only part that I took in the entire trial, was this short examination of Mr. Schaefer.

(Testimony of J. Robert Patterson.)

Q. Did you, prior to going into this matter for Mr. Bowden, have a conference with the State authorities?

A. Yes, Mr. Hicks and I had two or three conferences with them.

Q. And with whom did you talk?

A. Mr. McCourt and Mr. Collier, and also, I think, Mr. Bagley.

Q. Mr. Handley was the first man?

A. Mr. Handley, I believe, died in the meantime.

Q. And did you, at the time during the trial of that proceeding [54] —was it ever brought out before the Court or before the jury that you held any position with the United States Attorney?

A. No, it was not.

Q. Now, Mr. Patterson, the manual issued by the Attorney General's office reads as follows: "In the interest of cooperation between the two prosecuting agencies and for other obvious reasons, Assistant United States attorneys should not accept employment to defend persons charged with a crime in a State court." Now, were you at that time familiar with that manual?

A. No, I was not, Mr. Green.

Q. Had it been shown to you?

A. No, it had not. I do say that on certain occasions I think that Mr. Hess had taken excerpts from the manual out and sent them back as memos to all the assistants on certain other matters, but I didn't know where they came from.

Q. And were you aware of any restriction upon

(Testimony of J. Robert Patterson.)

the power of an Assistant United States Attorney to appear in a case of this type?

A. No, I was not.

Q. Did you make any presentation to the jury?

A. No.

Q. Did you make any opening statement?

A. No.

Q. Did you make any argument? [55]

A. No.

Q. Were you aware at that time that you were breaching any canon of ethics, any rule of propriety, in what you were doing?

A. No, I was not.

Q. Now, you did receive a fee?

A. Yes, I did.

Q. And Mr. Hicks received a fee?

A. Yes, he did.

Q. After you called Mr. Hicks in, as I understand it, the sole responsibility of the trial was accepted by him? A. Yes, it was.

Q. Now, Mr. Patterson, I want you to tell, in respect to the third charge, this sailor, Mr. Martin, who testified here, just what was your contact with Mr. Martin?

A. Well, about 1:30 one afternoon Mr. McFarland brought Mr. Martin into my office and told me that he was one of his probationary men and that he had some matters which he wanted to discuss with me, and he at that time had a letter, —I believe two letters, one from the District Court in San Francisco saying that he had this money on deposit,—I believe it was \$1075, or something

(Testimony of J. Robert Patterson.)

like that—and also a letter from the captain of the vessel saying that the captain would not withdraw the charges against him so that he could get his money back.

Q. Did that letter indicate what the charges were?

A. Yes; he was charged with willful desertion aboard the ship. As I remember, it was at Sydney, Australia, but it may have been Brisbane.

Q. Were you informed at that time as to why Mr. Martin was on probation?

A. I thought it was for willful desertion from the ship.

Q. No, but I mean were you informed as to why he was on probation? A. No.

Q. Go ahead. What was your conversation then?

A. Well, Mr. McFarland left then, after he had introduced the boy, and Mr. Martin told me his predicament, that he had the money down in San Francisco, and he wanted to know if there was any way to get it back, and I told him if the money had been here in Oregon that I would prepare the papers for him up here in the court and try to assist him in getting his money back, that we had done that, that had been our practice, but I informed him, in view of the sum of money and in view of our experience with the court here, that they wouldn't give him his money back, he should have to go to San Francisco and appear in court and testify. I told him he should go to the United States Attorney's office in San Fran-

(Testimony of J. Robert Patterson.)

cisco or get a private attorney there. He told me at that time he couldn't go to San Francisco because he couldn't leave the District. I told him I was sure he wouldn't have any trouble arranging with the court to go down there for that purpose. He said no, there were certain other reasons why he didn't want to go down. So [57] I then asked him if he had an attorney and he told me no, his brother had one, and I told him to go and see his brother and if he didn't get any satisfaction to come and see me at my private office in the Yeon Building and I would see what I could do for him, and I then gave him a card. He asked me, before he left, "What is the approximate fee an attorney would charge for doing this?" I told him I didn't know, it would depend on the work you would have to do and whether or not he had to send it to a correspondent attorney down in San Francisco, that I thought the fee would be around \$175, and Martin thanked me and said he would think it over, and that is the last I saw of him.

Q. Until today?

A. Until today, and then the—well, no, I wasn't at that hearing. Today is the first time I have seen him since that time.

Q. Was this advice you gave him in good faith?

A. Yes, it was. I was only interested in seeing the boy get his money back.

Q. And there was no money ever paid you?

A. There was no money ever paid me, no.

(Testimony of J. Robert Patterson.)

Q. Had you acted for sailors before this court in Oregon to secure release of their money?

A. Yes, I had.

Q. You had, before that time? [58]

A. Yes.

Q. And if the money had been in Oregon would you have so acted?

A. Yes, I would have. I might say, Mr. Green, that in 'most all instances in my experience at that time the Court had required the presence of the seamen in court, and that was one of the reasons I felt sure he would not be able to get his money unless he went to San Francisco in person.

Q. Now you are talking about that if the court in Oregon had had the money in court——

A. Yes, I am.

Q. —testimony had been taken and some facts adduced, or testimony in other form?

A. Yes; the man is placed on the witness stand, generally.

Q. Now, with respect to the charge numbered (d) sub-paragraph (d) of the complaint,—this involves the Costello case, proceedings filed in the record and exhibits. What did you have to do with the Costello situation?

A. Well, I had represented the United States before the grand jury and as a result Mr. Costello was indicted, and subsequently he was brought into court and entered a plea of guilty and the matter was referred to the Probation Officer, and subsequently he was brought back into court for

(Testimony of J. Robert Patterson.)

sentence, and then I believe the Court placed Mr. Costello on probation or suspended sentence.

Q. Did you make any recommendation? [59]

A. No, I did not.

Q. Were you asked by the Court as to whether or not you had a recommendation?

A. Yes, I believe I was.

Mr. Green: I would like to introduce in evidence a copy of the transcript of the proceeding in C-16714 and C-16715, unless those are in the Costello—Are they in the judgment roll? May I ask that question?

Mr. Dezendorf: I think a copy of it is in the file.

Mr. Green: Well, your Honors, if this is in as a part of the judgment roll I have no desire to burden the record or incumber the record. It is 16714 and 16715.

The Court (Fee, J.): The transcript of the proceedings of December 7, 1945, and transcript of the proceedings of January 4, 1946, are in the file.

Mr. Green: May I inquire the first date? December 7th?

The Court (Fee, J.): December 7th, 1945.

Mr. Green: And January 4th, 1946?

The Court (Fee, J.): Yes.

Mr. Green: Would the Court permit me to inquire this one question: The transcript that I have here is ten pages. I just simply want to see that the whole record is there. That is all I am concerned with.

(Testimony of J. Robert Patterson.)

The Court (Fee, J.): Yes, this is ten pages, with the reporter's certificate, Alva W. Person, on the eleventh page. [60]

Mr. Green: I was in error, your Honor, and I think that I misread, your Honor. The first proceeding that I have consists of four pages.

The Court (Fee, J.): Yes, there are four pages.

Mr. Green: Five pages—and then the second proceeding consists of ten pages.

The Court (Fee, J.): Four pages, and the reporter's certificate on the fifth page.

Mr. Green: And the other is ten pages, and the certificate on the eleventh page?

The Court (Fee, J.): That is right.

Mr. Green: Well, I haven't any desire to incumber the record, then, if that is already on file.

The Court (Fee, J.): These are on file, in both cases, a part of the record.

Mr. Green: Yes. Now, did you at that time share any fee with Mr. Klepper—no, strike that out, please. Were you associated with Klepper, did you occupy office space with Milton Klepper, at that time?

A. Yes, I had my private office with him at that time.

Q. And did you share in the fee that he received in the Costello case at all? A. No, I did not.

Q. I think there was one question on this other matter. Prior to the time that you were relieved of your duties in the United [61] States Attorney's office,—I am now referring to the Martin matter. That is the seaman's matter, where the money was

(Testimony of J. Robert Patterson.)

in the registry of the court in San Francisco.—
was there a different practice established by the
United States Attorney's office in Portland with
respect to seamen that were charged as deserters?
Did that happen before you left the office?

A. No, that was afterwards.

Q. It was afterwards. Now, with respect to
sub-paragraph (e), which is an allegation that,
commencing on or about October 2nd, 1946, you
represented and held yourself out as a member
of a partnership composed of Milton R. Klepper,
McDannell Brown, and yourself, although you were
not then and are not now a partner of Milton
Klepper, McDannell Brown, or either of them. I
want you to tell us and tell the Court in detail
just exactly what your association with Milton
Klepper was, what your arrangements were, and
so forth.

A. Well, when I first went with Mr. Klepper,
in October of '45,—or was that '44?—'44—Mr.
Klepper paid me—I had a drawing account of
\$50 a month, and Mr. Klepper shared in one-half
of any fees that I obtained from my private busi-
ness. Mr. Klepper furnished me office space, sten-
ographer, stationery, and things like that. I per-
formed work for him, and in cases that I had I
naturally consulted with him. That was the ar-
rangement until I went in the United States At-
torney's office. I was associated with him. [62]

Q. When did you go to the United States At-
torney's office?

A. May 21, 1945. That was about seven months,

(Testimony of J. Robert Patterson.)
seven or eight months, after I had first gone with Mr. Klepper.

Q. Did you have knowledge of Exhibit 12, which is an assumed business name filed by Klepper, Brown & Patterson?

A. No, I didn't know about that until after these proceedings came up.

Q. You knew about the stationery?

A. Yes.

Q. You knew about the letterheads?

A. Yes.

Q. You knew about the billheads?

A. Yes.

Q. You knew about the legal documents?

A. Oh, yes. Understand—I think we might get mixed up a little bit, Mr. Green. When I first went there that was not the situation. The situation was Milton R. Klepper,—

Q. I understand.

A. —and it was not until some time, I believe, in May of '46—

Q. Was it October of '46? A. Pardon?

Q. Was it October of '46?

A. Yes, I think that was the date.

Mr. Green: May this witness be withdrawn? [63]

The Court (Fee, J.): Yes.

(Witness excused.) [64]

MILTON R. KLEPPER

was thereupon produced as a witness in behalf of J. Robert Patterson and was examined and testified as follows:

The Clerk: Your name is Milton R. Klepper?

A. That is right.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Green.

Q. How long have you been practicing law, Mr. Klepper?

A. Well, I was admitted in New York City in April, 1910, so I began practicing there after I got through school in June, 1910.

Q. Where did you have your legal education, Milt?

A. Columbia University, New York. Mr. Green, let me ask you, please,—I think I can make this, but it will perhaps be pretty slow, so if you just give me—not that you aren't—an emotional upset gets me.

Q. Let me ask you, Milt,—now, you just tell the Court and you tell me—you just came from the doctor's now?

A. I just came from the clinic, yes.

Q. Would you prefer to give your testimony at some other time?

A. No, I think that we should see. I think I can make it,—because, you see, I have had eight months of this, since May, and I am not progressing fast toward recovery. It takes a lot of time, they tell me, and I perhaps wouldn't be any better

(Testimony of Milton R. Klepper.)

a month from now than I am now, but I believe I will be all right, Mr. Green, but I just want to let you know to go slow and not get me upset.

Q. Any time you ask me to stop, just let me know and I will be very glad to do that.

A. That will be very kind.

Q. Now, Milt, I will make my questions just as few as possible. How long have you practiced in Oregon?

A. Since August or September, 1910, but I—yes, that would be right. I was admitted on probation for six months, I believe, at that time, and I actually was admitted permanently in April, I believe it was, of '11.

Q. Now, I want to ask you, Milt, what public offices have you held in the state?

A. State Senator from Multnomah County.

Q. For how many terms?

A. Four terms—well, now, wait,—I guess it would be considered two terms of two sessions each. That would be it.

Q. Milt, do you remember anything about the Hughes case, Hughes versus Alaska Steamship Company?

A. Yes, I remember something about that case, a couple of years ago, yes.

Q. Did you participate in the trial?

A. As I remember, I sat in the court. Maybe I participated a little bit. I am not sure. Maybe I did not. Maybe I took no [66] part, maybe I took a little part. The boys would remember. I don't remember who was on that case now. If I participated, it was very little.

(Testimony of Milton R. Klepper.)

Q. Was Hughes your client or was he a client of Bob Patterson's?

A. Well, I suppose it could be said that he was a client of the office, both of us.

Q. All right; but the main part of that trial work was handled by Bob Patterson, was it?

A. Oh, that is right.

Q. Now I want to come down to this one question here, that you have letterheads and stationery and billheads and legal documents or legal papers where it has printed thereon "Klepper, Brown & Patterson", is that right?

A. That is right, sir.

Mr. Green: And, Mr. Clerk, would you show him Exhibit 12, which is an assumed name certificate.

Q. Did you prepare and cause that document, which is Exhibit 12, to be filed?

A. Well, unquestionably I caused it to be prepared and, directly or indirectly, caused it to be filed. I imagine my stenographer prepared it, you know, naturally. Yes, that is right. That is my signature.

Q. Now Milt, I want you to tell what arrangements you had with Bob Patterson. Now, just confine your testimony to Bob Patterson. [67]

A. At the time this was filed?

Q. Well, after that, subsequent to that time.

A. Well, when Mr. Patterson first came with me, it must have been '46 or earlier, I believe I paid him a monthly salary—or weekly salary, it was, sort of a guarantee, call it salary, or whatever

(Testimony of Milton R. Klepper.)

you want to call it, I believe at the beginning \$50 per week, and such business as he would bring into the office would be the office business, or the business of the office, and he was to have fifty percent of that and fifty percent go to the office. And then at times there would be special cases where I would make a nice fee out of it and Robert would do the substantial part of the work. Now, that is before he came over to Mr. Hess' office. Say, for instance, I would make—have a nice piece of business and make a couple of thousand dollars fee, I would probably give Robert—I know I did at different times—we didn't owe him anything, but he did the work, likely, a nice piece of work—a couple of hundred dollars; so I would put my fee, for income tax purposes, eighteen hundred and give him a couple of hundred. There might be a little piece of business where I would make twenty dollars, he did it all,—you know, somebody would drop in,—I would say, “Well, Pat, here is five dollars,” something like that. He had to live, too, he had a wife and family. And so that is probably what I did with other boys: I have had different boys in the office over thirty or thirty-five years. So, you see, there were really [68] three things there: There might be a salary or drawing account, fifty dollars a week, enough to live on, I would say, and fifty percent of what he brought in, and then certain amounts of business, certain lines of business or pieces of business, he would be a partner on. In other words, a lot of those up there, there was kind of a special partnership, I will say. Maybe my mind isn't

(Testimony of Milton R. Klepper.)

working just exactly right. That is what it would be, a partnership basis.

Q. Now, Milt, let me ask you a question: Of that money, or while Bob Patterson was there, did you withhold any tax payments, or did he pay his entire tax? Were there any withholding taxes?

A. Say, Mr. Green, some of these things I may not be able to answer. Some of these things I may not be able to answer, and I can't answer that one right now without looking. I have been eight months away from my office and I haven't been thinking about legal matters. I can't answer that just now, how that was handled.

Q. Let me ask you, how often would it happen that you would give Pat a certain portion of the fee that you obtained?

A. Oh, that I can't answer, because I have no particular use to want to look it up, unless—we would have a particular piece of business, and my files or the record would show that I made two thousand dollars of that and my records would show I made two thousand—I mean eighteen hundred, and gave Pat two, but just the number of times I wouldn't know. It might be once a month, or twice a month, or once a week, for over a period of time. But I had Pat there helping as a partner, I would say, on those cases. We had quite a bit of work in the office.

Q. Now, Milt, would he go to court for you and argue demurrers?

A. Oh, yes, yes, that is it. Yes, he would

(Testimony of Milton R. Klepper.)

handle demurrers and motions and get pleadings ready on cases.

Q. Would he do any trial work?

A. Oh, yes.

Q. And would he assist you in trial?

A. Oh, yes, yes. And then we had the firm name there, Klepper—at first it was Mr. Calavan, and then he went into the Navy,—if I remember correctly, I carried his name in the firm, and then he gave up the law business and is studying to become a minister now, at a theological seminary in San Francisco, Corwin Calavan. Maybe some of you remember him. He will make a good minister, too,—carried his name there, Klepper, Calavan & Patterson. And we had to have insurance, about the only way we could keep the young fellow. In my time, do you remember, Judge Fee, when we got through at Columbia we went down to New York and started in at fifty dollars a month, and here the boys were getting fifty dollars a week. We had to pay them to get help.

Q. Now, there was a part of this time, Milt—or after Bob came into the United States Attorney's office did you still pay him the fifty dollars a week? [70]

A. No, I don't think so. No, I would say positively no, I did not. No. No, I did not pay him any salary.

Q. Well, after he came into the United States Attorney's office would he, upon your request, go to the court to argue a demurrer for you, or an ex

(Testimony of Milton R. Klepper.)

parte matter, or assist you in any matter that you had in the office?

A. Yes, as I remember, our relationship, to the best of my judgment now, remained the same, except the salary that I paid him. I was not responsible for any salary. He was earning his salary here after he moved from my office. But he would assist. I supposed that that was all right.

Q. Well, you didn't make any pretense or make any attempt to hide the fact that you had the name "Klepper, Brown & Patterson"?

A. Oh, no, we had the name just the same, as I recall it, on the door and on the stationery and in the pleadings.

Q. It is that way in the telephone book, isn't it, or not? A. Oh, yes.

Q. And in the City directory?

A. I presume so.

Mr. Green: Now, may it please the Court, one question I asked Mr. Klepper which I am anxious to have answered and which he can't answer, I would like to have some agreement or some manner by which the answer may be supplied, and that is whether or not he withheld a withholding tax when Mr. Patterson was there in his office or whether or not that tax was paid directly to [71] Mr. Patterson. He said he can't answer it now. I don't know whether he can go to the office and get the answer now, but I am wondering if we can agree on some manner whereby that can be supplied in the record?

Mr. Dezendorf: Agreeable with me.

(Testimony of Milton R. Klepper.)

The Court (Fee, J.): Yes. What method do you want to use?

Mr. Green: Well, my suggestion would be—I don't want to call Mr. Klepper up here again. I thought possibly he could go to his office sometime——

A. I think probably I can. I get down to my office once or twice a week for an hour or two.

The Court (Fee, J.): Well, I dislike that. Can't you agree on some statement, that Mr. Klepper, if he had his records, would testify to it?

Mr. Green: Well, the statement, the information that I have been given, that if he had his records he never withheld the withholding tax from Mr. Patterson, that this fifty dollars a week was paid to Mr. Patterson, and this matter is so significant and it has been passed up on by many courts, with respect to what is or what is not a part of the partnership, and that is one of the elements.

Mr. Dezendorf: I have no objection to admitting that no tax was withheld on the moneys paid to Mr. Patterson by Mr. Klepper.

The Court (Fee, J.): Does that satisfy you? [72]

Mr. Green: Yes, or let us say any moneys paid by Mr. Klepper to Mr. Patterson, or let us say any moneys received by Mr. Patterson while associated with Mr. Klepper there in the office. I want to make it all-inclusive. I don't want it to be just a matter of ten bucks. I want it to be all-inclusive.

Mr. Dezendorf: That is agreeable.

Mr. Green: Then it is stipulated that in any

(Testimony of Milton R. Klepper.)

moneys paid by Mr. Klepper to Mr. Patterson there was no withholding tax held out by Mr. Klepper or any other person, that Mr. Klepper paid him the whole amount. Is that agreeable?

Mr. Dezendorf: That is agreeable.

Q. (By Mr. Green): Mr. Klepper, you appeared in the Costello case, didn't you, as attorney for the defendant? Do you remember it at all?

A. Is that the narcotic case?

Q. Yes.

A. I did, that is—yes; yes, I appeared in that case at one stage of the proceeding,—arraignment or sentence, I believe.

Q. Can you recall any of the proceedings at all?

A. You mean that took place in the court?

Q. No, I will strike that question out. Mr. Patterson appeared there for the government, didn't he?

A. Well, now, I couldn't swear that Pat was there, or this [73] gentleman—you are Mr. Twining?

Mr. Twining: That is my name.

A. Yes,—or one of the other boys from the office, because—now, I am trying to explain why I can't fix that in my mind. There was really no proceedings there excepting the matter of sentence, as I recall, and a statement made by me, and I have no way of remembering anything that anyone from the District Attorney's office said, unless the Judge asked him and they said, "We have no recommendation," or something. So I am vague on that. However, let me say, it is my opinion that Mr. Patter-

(Testimony of Milton R. Klepper.)

son was there, and maybe one or two of the other boys from Mr. Hess' office. Mr. Hess might have been there himself. I don't remember. Because I didn't have any contact in any way with Mr. Hess' office. It was just a matter of possibly I thought I could be of some help to the Court and to the boy, of course, the investigation that I had made, which I told the Court about. Now, answering your question, or repeating it, perhaps,—you will pardon me—I can't swear definitely one way or the other, only it is my opinion that Robert was there.

Q. (By Mr. Green): Now, Mr. Klepper, this is a question, then I think I will close the matter: Did you always consider Mr. Patterson a limited or special partner of yours after you filed this assumed name certificate?

A. Well, even before that was filed—I don't know whether we used "limited" and "special" or not—— [74]

Q. No, I mean as to what was in your mind?

A. —as synonymous, but he was a partner, I would say a limited partner, with me, as Calavan and Brown. That was all, in my consideration. I think partnership, although I studied partnership under Bob Burdick (?), as some of you remember it, you generally look at it as an easy subject, but sometimes it isn't so easy. But I did always consider Patterson and some of the other boys had a special partnership.

Mr. Green: I think you may take the witness.

Mr. Dezendorf: Is it agreeable with you, Mr.

(Testimony of Milton R. Klepper.)

Green, if I adopt as part of my case Mr. Klepper's testimony with respect to the relationship between him and Mr. Patterson, without restating it?

Mr. Green: That is agreeable. I think you have that right, anyway.

Mr. Dezendorf: Is it agreeable with the Court if that be done?

The Court (Fee, J.): I didn't understand.

Mr. Dezendorf: If I adopt as part of our case Mr. Klepper's statement as to the relationship between him and Mr. Patterson, the way it occurred?

The Court (Fee, J.): Yes.

Cross-Examination

By Mr. Dezendorf:

Q. Did you consider Mr. Patterson a special or limited [75] partner after he went into the United States Attorney's office?

A. Now, you say "special or limited." I don't think those words are synonymous. Maybe you did not intend to use them that way. I think we had, as a matter of fact, at least from my standpoint, kind of a partnership arrangement or condition there. We carried his name. I believe we carried his name, I carried his name, on the letterhead of the firm and on the door, and he did certain work for me.

Mr. Dezendorf: That is all.

Mr. Green: I think that is all, Mr. Klepper. Thank you very much.

(Witness excused.)

Mr. Green: We have been here, your Honor, since 2:00 o'clock. May we have a recess for five minutes? I would like to have Mr. Patterson go down with Mr. Klepper to get a cab, or perhaps his wife is waiting down there. I would like to have a recess for five minutes.

The Court (Fee, J.): Court is in recess.

(Short recess.)

Mr. Green: With the permission of the Court, I would ask leave to call Mr. Hicks and interrupt the examination of Mr. Patterson. Mr. Dezendorf said he would not object.

Mr. Dezendorf: No objection.

Mr. Green: Take the stand, Mr. Hicks. [76]

EDWIN D. HICKS

was thereupon produced as a witness in behalf of J. Robert Patterson and was examined and testified as follows:

The Clerk: Your name is Edwin D. Hicks?

A. Yes.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Green:

Q. Mr. Hicks, you are a practicing lawyer in the state of Oregon? A. Yes.

Q. Admitted to practice when? A. 1928.

Q. You are a graduate of what school?

A. University of Oregon.

Q. Take any post-graduate work?

A. Yes, at Yale University for one year.

Q. Where did you first practice?

(Testimony of Edwin D. Hicks.)

A. At Canyon City, Grant County, Oregon.

Q. Did you hold any public office?

A. I was District Attorney there for four years, '28 to '32.

Q. Have you ever held any office with the United States of America?

A. Yes, I was Assistant United States Attorney for the District of Oregon for three years, 1933 to 1936. [77]

Q. Who was United States Attorney at that time? A. Carl Donaugh.

Q. And you are now in private practice?

A. Yes.

Q. And you office in the Failing Building?

A. In the Failing Building.

Q. And you are there associated in practice with Mr. Tongue and Mr. Davis? A. Yes.

Q. Do you know Mr. Patterson?

A. Yes, I do.

Q. How long have you known him?

A. Well, I think I have known him about six years. That is roughly correct.

Q. Now, Mr. Hicks, were you associated in the defense of the Bowden case? A. I was.

Q. And how did you get into that case?

A. I was referred in that matter by Mr. Patterson to Mr. Bowden, whom I had not known before that time. Mr. Patterson had represented Mr. Bowden in some divorce and other proceedings.

Q. And from that day forward who had charge of that defense? A. I did.

(Testimony of Edwin D. Hicks.)

Q. Mr. Patterson did receive some fee for that, for his work in that? [78]

A. Yes, he received one quarter of the stipend or compensation that was paid.

Q. Now, did you or Mr. Patterson have any conference with the prosecuting attorneys for the State of Oregon?

A. Yes, we did; we had a number of them.

Q. And to your knowledge, did they have knowledge of the fact that Mr. Patterson was Assistant United States Attorney?

A. Yes, they knew that.

Q. Was there any expression of the prosecuting attorneys of the State of Oregon that that was not proper?

A. There was never any such suggestion, to my knowledge.

Q. And during the course of this trial was it ever mentioned over there that Mr. Patterson was United States Attorney?

A. I believe it was not ever mentioned.

Q. And to what extent did Mr. Patterson participate in the trial?

A. He sat with me at counsel table throughout most of the trial. There were times when he was absent, and what percentage of the time he actually sat I couldn't say.

Q. Did he make any opening statement to the jury?

A. No, he made no opening statements. He did not make objections to testimony, as I recall. The

(Testimony of Edwin D. Hicks.)

only participation that Mr. Patterson did engage himself in throughout the trial was a very brief cross-examination of one witness, as I recall, a Portland police officer. That was occasioned from the fact that [79] Mr. Patterson had had some meetings with the police officer and there was some dispute as to exactly what occurred in respect to those pleadings, and I believe I requested Mr. Patterson—I don't know how that came up, but, anyway, he did cross-examine—very brief cross-examination of one witness. But, anyway, that is the only participation that he took in the trial.

Q. Was he called as a witness?

A. No, he was not.

Q. Did you contemplate, when you were working on the preparation of that case, did you contemplate that he would be called as a witness?

A. Well, we didn't know for sure, but Mr. Patterson had some knowledge of the divorce proceedings and the affections that Mr. Bowden had displayed toward his wife, and it was conceived as possible, but not for certain, that Mr. Patterson would be called as a witness. It developed that the matters that we thought might be developed were not developed, and, therefore, it was not necessary to call Mr. Patterson as a witness and we did not call him. I am quite positive that we did not.

Q. Then at the time you started the case for trial you didn't know whether you would need to call him?

A. No, we had no way of knowing, because that

(Testimony of Edwin D. Hicks.)

would depend completely on what the State might undertake to prove.

Q. Now, Mr. Hicks, you were Assistant United States Attorney for a period of three years; is that what you said? [80] A. Yes.

Q. And you were familiar with the Attorney General's manual, which reads, "In the interest of cooperation between the two prosecuting agencies and for other obvious reasons, Assistant United States Attorneys should not accept employment to defend persons charged with a crime in a State court?"

A. No, I was not aware of that provision in the manual. I am not sure that I was aware that there even was an Attorney General's manual defining duties and rights of United States Attorneys. If I ever saw the document I have no recollection of having seen it.

Q. Was it called to your attention when you went in as Assistant United States Attorney?

A. Well, I feel quite sure that it was not.

Q. When you undertook the defense of Mr. Bowden was it made clear to Mr. Bowden,—I mean by Mr. Patterson, in your presence,—did Mr. Bowden understand that you were the person in charge of his defense?

A. Well, I can't state any formal conversation to that precise effect. I think it was understood by Mr. Bowden that I was in full charge of the case, because I did most of the investigation, I had most of the meetings myself alone with Mr. Bowden, I had complete charge throughout the trial

(Testimony of Edwin D. Hicks.)

and throughout the preparation for the trial, and of course that was the understanding with Mr. Patterson that I had, that I [81] was to be the counsel on the case and to have full charge of it. I did collaborate with Mr. Patterson and had meetings with him in preparation for the trial, but I think that I had the chief and full responsibility for the defense.

Q. Did Mr. Bowden have other lawyers, other than you and Mr. Patterson?

A. No, not to my knowledge.

Q. Were you aware that Mr. Patterson's being with you in court was in violation of any rule of ethics, any canon of ethics, or any rule of propriety?

A. No, I definitely was not.

Q. So far as you were concerned, you conducted the trial in the utmost good faith?

A. I did the best I could.

Q. It is suggested to me that you yourself employed other attorneys to do some research work on the matter.

A. Yes, I did employ one attorney specially to do quite a substantial amount of research work, and Mr. Tongue, in the office, engaged himself likewise in that behalf.

Q. Who was that attorney other than Mr. Tongue? A. Gilbert Sussman.

Mr. Green: I think you may take the witness.

Cross-Examination

By Mr. Dezendorf:

Q. As I understand your testimony, Mr. Hicks,

(Testimony of Edwin D. Hicks.)

as you went [82] into the trial of this case it was expected that probably Mr. Patterson would have to be a witness?

A. It was anticipated that he might. Of course, we could not tell for sure, because they did not apprise us as to what their proof was to be.

Q. And did I understand you, also, that the question of the propriety of Mr. Patterson acting as attorney in the case was never discussed nor even considered by you?

A. Well, that is true. I did not have the slightest idea that there was any suggestion of impropriety or, of course, I would have called it to Mr. Patterson's attention and would have made arrangements that it should be removed.

Q. And it was not discussed between you?

A. No, I never heard that question raised until, I think, it was raised in this proceeding.

Q. Mr. Green asked you whether the fact that Mr. Patterson was an Assistant United States Attorney came out during the trial, and your answer was no.

A. I don't believe it did at any time.

Q. It did, however, come out in the newspaper reports which were in the papers, in connection with the case, that he was Assistant United States Attorney and was Mr. Bowden's attorney?

A. I know it was noted in the paper that he was Mr. Bowden's attorney. As to reference as an Assistant United States Attorney, I could not be sure. I have read many of those [83] items, but I could

(Testimony of Edwin D. Hicks.)

not be sure that they referred to him as that, but I assume possibly they did.

Q. When you went into the trial was it then agreed between you and Mr. Patterson that he should participate with you in the fee?

A. Yes, I think that agreement was made at the time we originally discussed the matter and a fee arrangement was made. I believe that is correct.

Mr. Dezendorf: I believe that is all.

Mr. Green: That is all.

The Court (Fee, J.): Mr. Hicks, I want to ask you a few questions. When you were in the United States Attorney's office did you appear in any criminal cases for the defense?

A. No, your Honor, I think I did not.

The Court (Fee, J.): You did that, didn't you, upon the ground that it was not proper for an Assistant United States Attorney to appear in the defense of a criminal case?

A. Well, I don't believe I had any opportunities to defend any criminal cases and I don't believe the question ever came to my mind, your Honor.

The Court (Fee, J.): You know it is not proper, don't you?

A. Well, I understand, since the question is raised here, that there is some suggested lack of ethics in that consideration.

The Court (Fee, J.): Didn't you know it?

A. No, I certainly did not. I certainly would not—— [84]

The Court (Fee, J.): Just a moment, before

(Testimony of Edwin D. Hicks.)

you answer so fast. Do you remember coming in my office, before you came to Portland, a situation where you had a letter from the United States Attorney?

A. Was this while I was in the District Attorney's office?

The Court (Fee, J.): Yes.

A. A letter from some other United States District Attorney?

The Court (Fee, J.): Yes. I will be specific. You remember when George Neuner wrote a letter to you and suggested to you that as District Attorney of the State of Oregon you did not have any business defending a criminal case in the Federal Court, don't you? A. Now——

The Court (Fee, J.): A very hot letter, too?

A. No, I think the incident that your Honor is referring to arose in this way, I think this is the only contact I had with George Neuner and with your Honor before I was appointed; That arose over a sentence that was imposed by this Court on one of our Grant County moonshiners.

The Court (Fee, J.): Yes.

A. I wrote a letter to George Neuner protesting the minimal sentence that was given that man. We had been trying to catch him for years over there and I had cooperated with the Federal officers, and when he got off with practically no sentence at all, two or three hundred dollars fine, I did write a letter to [85] George Neuner, with a copy to your Honor, protesting that result. I was then prosecut-

(Testimony of Edwin D. Hicks.)

ing over there and cooperating with the Federal officers in the investigation of that matter. Now, I don't believe there were any indications there concerning my representing anyone while I was District Attorney, because certainly I was not, and I think that was a wholly collateral matter. I don't see what your Honor is driving at here, because the question of one attorney representing another—or a defendant while he was engaged in the service of the State did not come up. Now, that is my recollection of that incident, your Honor.

The Court (Fee, J.): Do you remember the fact that it was not a protest of a minimum sentence, it was because the Court had given him a sentence that was too much and that you wanted to get him off, and that the letter you wrote to George Neuner was on account of the fact that we had given him six months and you wanted him paroled and you wrote to me about the matter?

A. Yes.

The Court (Fee, J.): And George wrote you a very hot letter in which he said that you had no business as District Attorney of the State of Oregon to interfere in behalf of a man who had been sentenced in the Federal Court? And, incidentally, I know the name of the defendant, too.

A. Just a minute,—I think your Honor is wrong in the consideration of the matter, because I remember that incident [86] specifically, and the correspondence with the Court would show that I was actually protesting the minimum sentence that that fellow got.

(Testimony of Edwin D. Hicks.)

The Court (Fee, J.): Well, incidentally, I sentenced him.

A. Well, I may be wrong, but that is my recollection of it.

The Court (Fee, J.): I tell you very definitely you are wrong, because I remember you came to my chambers at the time and I told you I thought it was improper for you to be protesting the case of a man that had been picked up here and I stated at that time what I thought was the code of ethics that applied to prosecuting officers.

A. That was the Kilgore case, your Honor, United States versus Kilgore, I am quite sure. Well, the Court may be right in his recollection of it, but my recollection is quite clear that I was disappointed that after years in trying to catch that fellow he got off without a fine after I had worked hard on those fellows over there, but I could be wrong on that.

The Court (Fee, J.): No, it wasn't the Kilgore case.

A. I may have the name wrong.

The Court (Fee, J.): It is the son of a lawyer over there.

A. A moonshine case?

The Court (Fee, J.): One of the older lawyers. I don't want to mention the name.

A. Was it a liquor case?

The Court (Fee, J.): Yes, it was a liquor case.

A. Well, I don't remember it. Really, I don't.

The Court (Fee, J.): I don't want to bring

(Testimony of Edwin D. Hicks.)

the name in this proceeding, but he was the son of one of the older lawyers in Grant County, and one of the very well known older lawyers over there. You don't remember the incident that way?

A. No, I really do not, and I don't remember meeting your Honor until I came into the United States Attorney's office. Now, I could be wrong about that, but that may be true.

The Court (Fee, J.): I am very positive about that.

The Court (McColloch, J.): Why did Mr. Patterson not take the lead in this case?

A. Well, I can give you my idea why he did not.

The Court (McColloch, J.): No, tell me the fact.

A. Well, as best I know he hadn't had very much experience at that time, he was a young fellow, he hadn't practiced much, and I assume that he was concerned about his responsibilities over in the United States Attorney's office taking up more time than he could devote to the full preparation of the case, and I think he had some confidence in my capacity to defend the man.

The Court (McColloch, J.): Now, I ask you, please, to search your memory closely and answer this question: Did you not tell Mr. Patterson that he would have to get clearance of some kind from his superior before he could properly appear over there in a murder case as a defense lawyer? [88]

A. I recollect no such conversation with Mr. Patterson to that effect. I assumed that that had

(Testimony of Edwin D. Hicks.)

been done, I suppose. Everybody knew that Mr. Patterson was representing Mr. Bowden.

The Court (McColloch, J.): What do you mean? Assumed what had been done?

A. Well, I assumed that he had obtained such clearance, if there were any questions arising in that regard. I think everybody that read the papers knew that Mr. Patterson was representing Mr. Bowden. I don't think the question came up, so far as I can recall at this moment.

The Court (Fee, J.): Well, Mr. Hicks, what do you suppose the Attorney General's manual means by saying "for other obvious reasons?"

A. That is that clause that says that counsel should not——

The Court (Fee, J.): Yes, "for other obvious reasons"—what do you think that means?

A. Well, I suppose it means that it is not ethically appropriate, if you want me to construe the language,——

The Court (Fee, J.): That is what I mean.

A. —for one to be prosecuting in one court and defending in another.

The Court (Fee, J.): And didn't you know that there has been a universal custom in the United States Attorney's office, not only when you were there but since time immemorial, that if anybody took a case in which the prosecution of a criminal [89] was involved the United States Attorney and the Attorney General would have to be notified and they would have to say that it was all right and that

(Testimony of Edwin D. Hicks.)

it did not conflict with the interests of the United States?

A. Well, I didn't know that, your Honor, and I had never seen the question raised.

The Court (Fee, J.): Well, you have heard about clearance, haven't you?

A. What do you mean? Clearance through Washington, before an Assistant United States Attorney——

The Court (Fee, J.): No, clearance by the United States Attorney?

A. Well, I have heard it since this proceeding was raised. I don't recall that it ever arose when I was in the office, because we weren't doing much of that.

The Court (Fee, J.): Well, you were acting according to ethical principles, but didn't you know that there was such a thing as a clearance if there was a suggestion that United States interests might be involved?

A. You mean that an Assistant United States Attorney should clear with his superior before engaging himself?

The Court (Fee, J.): Yes, clear with the responsible officer of the United States?

A. Well, I suppose that would be implicit, your Honor, because I don't know, I am just thinking——

The Court (McColloch, J.): Do you say now that Mr. Patterson did not tell you before that State trial began that he got such a clearance?

A. I don't think we ever discussed that. I don't think the question came up at all. I assumed that he had it, I suppose. I don't think that it did.

(Testimony of Edwin D. Hicks.)

The Court (McColloch, J.): Well, what do you mean, you assumed that he had it?

A. Well, I don't think we ever discussed that. After all——

The Court (McColloch, J.): You are not even saying that you assume now that he had. You are saying that you assumed that he had it.

A. Well, I don't know what went through my mind at that time, your Honor. I don't think we ever discussed it or considered it as a point. Certainly if we had, I, in protection to Mr. Patterson, would myself have taken some step in that direction. He was my friend, and I would not have let him do something that I did not consider was proper.

The Court (Fee, J.): Well, you know it is unethical now, don't you? A. Yes.

The Court (Fee, J.): That is all, as far as I am concerned.

The Court (McColloch, J.): That is all.

Mr. Green: That is all, Mr. Hicks.

(Witness excused.) [91]

J. ROBERT PATTERSON

thereupon resumed the stand as a witness in his own behalf and was examined and testified further as follows:

Direct Examination—(Resumed)

Mr. Green: What was my last question?

(The last preceding question and answer were thereupon read.)

Q. In referring to October 2nd, that is the date of Exhibit 12.

(Testimony of J. Robert Patterson.)

A. I myself did not know anything about the assumed name certificate, but along in October sometime Mr. Klepper discussed whether or not we should do business under an assumed name and I knew he was going to have the letterhead printed and the name on the door changed. I did not know anything about the assumed name certificate.

Q. You mean the actual time it was filed?

A. No.

Q. You had talked about it and agreed to it?

A. Yes.

Q. I believe I asked you with respect to the Costello case. Did you make any recommendation to the Court in that at all? A. No, I did not.

Q. Were you asked for a recommendation?

A. Yes, I believe the Court asked me if I wanted to make one, or something along that line, and I said no. [92]

Q. Now, when this Bowden trial started, or before the Bowden trial, what was in your mind in respect to your expectation of being called as a witness?

A. Well, it never entered my mind, but later, after Mr. Hicks and I had talked about it and after he had started to prepare the defense, he said that "It may be that the State will bring in all this stuff about the divorce case, and in that case you will probably have to be a witness."

Q. Now, in this Bowden case——

The Court (Fee, J.): May I just ask about that now?

Mr. Green: Yes.

The Court (Fee, J.): Mr. Patterson, your pres-

(Testimony of J. Robert Patterson.)

ent answer omits a portion, "although he expected to be called as a witness at the trial." I take it that you mean by your present statement of it now that at the time you took the employment that you did not expect to be called as a witness, but——

A. —I did not even consider that, your Honor.

The Court (Fee, J.): But subsequently, and before the trial,—— A. That is true.

The Court (Fee, J.): —you did expect to be called, because Mr. Hicks said so?

A. There was a possibility, yes.

Q. (By Mr. Green): Well, your statement is that there was a possibility by virtue of these divorce proceedings? [93] A. That is right.

Q. But your expectation of being called was something that depended upon what was brought out during the trial? A. Yes, it did.

Q. Now, in the Bowden trial or in the matter of having the partnership listed on the door, were you at any time conscious of any unethical conduct?

A. No, I was not.

Q. And were you at all time acting in good faith? A. I certainly did.

Q. In respect to Martin, were you acting in good faith in respect to Martin? A. Yes, I did.

Q. Who was the United States Attorney when you were appointed? A. Mr. Carl Donaugh.

Q. You served under him how long?

A. Well, until Mr. Hess was appointed.

Q. Was that six months, or a year, or——

A. I believe that that was—I think it was almost a year, maybe a little more.

(Testimony of J. Robert Patterson.)

Q. Now, with respect to all these charges that have been filed against you, was there ever any conscious, intentional or willful violation of any duty or ethical duty, so far as you knew, in your own mind? A. There certainly was not. [94]

Q. Was any client or any court ever deceived or injured by virtue of anything that you did?

A. If anything had ever been called to my attention I would certainly have corrected it.

Q. No, that does not answer my question. Was any client or any court ever deceived by anything that you did? A. I don't believe so.

Mr. Green: You may take the witness.

Cross-Examination

By Mr. Dezendorf:

Q. Talking now about the Hughes case, Mr. Patterson, you are familiar with that? A. Yes, I am.

Q. As I understand it, it became apparent very early in the case that the defense was going to contend that the United States was the proper party defendant?

A. Yes, in their answer they raised that question.

Q. Did you ever discuss with Mr. Hughes the possible advisability of his getting other counsel?

A. Well, I don't think so until after this complaint was filed against me, and then I did inform Mr. Hughes that it would be necessary that I withdraw and that if he wished to prosecute his claim further I told him when the statute of limitations would run and for him to secure other counsel.

(Testimony of J. Robert Patterson.)

Q. Well, do I understand you, then, that it was not until [95] recently that you discussed the matter with him?

A. Well, the time that your complaint was filed, yes.

Q. In this particular proceeding?

A. Yes, the original complaint.

Q. There was no discussion before that as to the possible advisability of his getting independent legal advice?

A. I don't believe so.

The Court (McColloch, J.): Why did he leave it at that stage, Mr. Dezendorf? I don't understand you. He had lost the case.

Mr. Dezendorf: I understand.

The Court (McColloch, J.): What is the point?

Mr. Dezendorf: The point is that perhaps it would have been advisable, when the defense was raised that the United States was a proper party, for him to have discussed and have gotten the counsel of Mr. Hess to——

The Court (McColloch, J.): No, why was he talking to his client at the time your committee moved in, long after the case had been tried and lost on the merits?

Mr. Dezendorf: He said that he advised him if there were any further proceedings he would have to get further counsel and advised him as to the running of the statute of limitations.

The Court (McColloch, J.): What further proceedings?

A. There was a possibility of suits under the suits-in-admiralty act. [96]

(Testimony of J. Robert Patterson.)

Q. (By Mr. Dezendorf): Against whom?

A. Against the War Shipping Administration.

Q. And when did that cause of action accrue?

A. Well, at the time of the injury, if there was a cause of action.

Q. So that all the time he had in existence a possible claim against the government?

A. Well, there was that possibility. In my opinion, it was not well founded.

Q. Did you so advise him?

A. Yes, I did. I also informed him I was in the United States Attorney's office.

Q. Did you tell him he had a possible claim against the War Shipping Administration?

A. I believe I did, that there was that possibility in the situation.

Q. Did you tell him that you could not present the claim against the War Shipping Administration?

A. I think I did.

Q. But you are certain that you did not advise him to consult other counsel until this particular proceeding was filed?

A. No, I don't believe I did.

Q. I think you have already answered this in response to a question from the Court, but at the time you went into the trial of the Bowden case you anticipated that you might have to be [97] a witness?

A. There was that possibility, yes.

Q. By the way, going back for a moment to the Hughes case, whose client was Mr. Hughes, yours or Mr. Klepper's?

A. He was mine.

(Testimony of J. Robert Patterson.)

Q. Did you know about the Attorney General's manual at the time this Bowden matter came up?

A. I never knew of the Attorney General's manual, Mr. Dezendorf, until you called me on the phone that day.

Q. You had, however, seen these memorandums, these office memorandums, that went around from Mr. Hess?

A. Mr. Hess had sent memos around, and later on I found that they were excerpts from this Attorney General's manual, but I didn't know at the time I got the memorandums where they came from.

Q. Had you ever heard of clearance?

A. No, I had not.

Q. Did you discuss with Mr. Hess at any time the advisability or propriety of your representing Bowden in the State Court proceedings?

A. The Bowden case was discussed in Mr. Hess' office in the presence of Mr. Hess, myself, and Mr. Vic Harr on Saturday morning, the Saturday before the trial on Tuesday.

Q. But you had been in the case for some little time before that discussion? [98]

A. Yes, and I think 'most everyone knew that I was in it. I mean I had talked it around the office and discussed it with Mr. Harr, and I don't believe, though, that Mr. Hess had ever said anything to me or I had ever said anything to him prior to this Saturday.

Q. What was the conversation then?

A. He said at that time, "I wish you had told

(Testimony of J. Robert Patterson.)

me about this sooner, Mr. Patterson, because if you had I think I should have reported it to the Attorney General to see if I could have gotten his approval, and under the circumstances that you tell me I think that I could have secured it."

The Court (McColloch, J.): Had the trial begun?

A. No, it had not. The trial began on the following Tuesday.

Q. (By Mr. Dezendorf): Did he give you permission to continue?

A. I wouldn't say that he gave me permission, nor did he forbid me to.

Q. Where was the occasion where you took a leave of absence?

A. That was when I went in the Bowden trial.

Q. That was before this Saturday that you are talking about?

A. Oh, no, the following Tuesday I took the leave of absence. For the time I spent in the Circuit Court I took annual leave.

The Court (McColloch, J.): How did it happen that you talked to him on Saturday?

A. On the Saturday before the trial opened we sat down there and talked it over,—I don't know exactly how it came up—and [99] Mr. Hess told me something about the murder trials he had been in over in Eastern Oregon, and one of the principal defenses in the Bowden case was that a third man was involved in a family dispute, and Mr. Hess told me that that was very closely allied to an in-

(Testimony of J. Robert Patterson.)

sanity plea, I mean that the facts could be argued in a similar manner, and I discussed some of the murder cases he had over in Eastern Oregon.

The Court (McColloch, J.): You mean you brought it up generally and it developed in the talk that he thought it was proper for you to be in it?

A. No, he didn't say it was proper.

The Court (McColloch, J.): I mean that this came up casually. If you hadn't happened to be there and he hadn't happened to be there it would never have come up?

A. Well, we didn't meet down there for that purpose. I would say it came up casually. We were both there, Mr. Harr and I, and we were in Mr. Hess' office and we discussed it at that time.

The Court (McColloch, J.): Well, it just happened to be discussed?

A. Yes, that is true. I really thought, I was of the opinion, that everyone knew I was in the case. I wasn't trying to hide anything, never did.

The Court (McColloch, J.): Did he tell you then about the manual? [100]

A. No, he didn't tell me about the manual, but he did say that it might involve—he had just made a speech, I believe, before the District Attorneys' Association or something, in which part of his speech was devoted to the cooperation between the two prosecuting agencies, and he did tell me that this might involve something that there would not be that cooperation, that he had just made the speech, and it would seem funny that I would be over on the other side of it.

(Testimony of J. Robert Patterson.)

The Court (McColloch, J.): But you say you knew at that time or before that there was a manual?

A. No, I did not, your Honor. I never knew there was a manual until Mr. Dezendorf called me on the phone, and then I went in and talked——

The Court (Fee, J.): When was that?

A. That was after these proceedings were instigated. That is the first time I ever knew that there was an Attorney General's manual.

The Court (Fee, J.): When did you first hear the word "clearance," Mr. Patterson?

A. When Mr. Dezendorf called me on the phone that day—no, I don't think that is quite true, because on the Saturday when Mr. Hess and I talked it over, Mr. Hess, as I said, told me he wished that I had told him about it sooner, because he thought that under the circumstances he could have got clearance from the Attorney General.

The Court (Fee, J.): How long does it take to get clearance [101] from the Attorney General?

A. Well, I wouldn't know about that, your Honor.

The Court (Fee, J.): This was Saturday?

A. Yes, it was.

The Court (Fee, J.): The trial didn't start until Tuesday? A. Tuesday.

The Court (Fee, J.): Well, had somebody broken a leg or something, that they couldn't have wired the Attorney General's office?

A. Well, I guess that could have been done.

(Testimony of J. Robert Patterson.)

There were many facts that would be necessary to explain, I would imagine.

The Court (Fee, J.): What? That you were representing a criminal in the State courts?

A. No, the reason why, that— I had represented him in the divorce case, and that many facts represented in the divorce case would probably come up in this case.

The Court (McColloch, J.): What was this man convicted of? A. First-degree murder.

The Court (McColloch, J.): Was he executed?

A. No, life imprisonment.

The Court (McColloch, J.): It was charged, wasn't it, that he blew his wife up in a furnace?

A. No, that is not correct?

The Court (McColloch, J.): Wasn't that the case?

A. No, the charge was similar, your Honor, but the bomb was [102] stored in a foot locker in the basement and the bomb didn't go off when anyone had opened the locker. It was in a separate box inside the foot locker and had a padlock on it, and that night, the divorce case was pending, she went down and got into the foot locker with an axe and got this small package, and when she opened this small package it went off. Small bomb was inside the small package inside the foot locker.

The Court (McColloch, J.): Well, that is what the State charged him with, that he blew his wife up with a bomb? A. Yes, they did.

The Court (McColloch, J.): Which he set for that purpose? A. Yes, they did.

(Testimony of J. Robert Patterson.)

The Court (Fee, J.): Well, as I understand it, you now say that Mr. Hess gave you advice as to how to defend this case?

A. I wouldn't say that, your Honor.

The Court (Fee, J.): Well, it sounds very much like it, doesn't it?

A. It was talked over. That matter was discussed.

The Court (Fee, J.): And he told you what line to take in defense, is that it?

A. I don't think that I would say that he advised me directly how the defense should be conducted, no. He said that he had had similar cases over in Eastern Oregon. He gave me no advice as to how our trial should be conducted.

The Court (Fee, J.): He said he was sorry, but he helped you out, is that it?

A. Pardon?

The Court (Fee, J.): He said he was sorry that you were in it, but he helped you out?

A. He helped me out?

The Court (Fee, J.): Yes, by giving you some hints as to how to conduct the defense?

A. Well, that might be true, your Honor.

Q. (By Mr. Dezendorf): May I refresh your recollection? Wasn't the time I called you before the complaint was filed, but on the occasion when I asked you if you wanted to voluntarily appear before the Committee and make a statement?

A. That is correct. I am sorry. Right before the hearing, that is correct, the first hearing.

Q. Did you consider yourself a special or lim-

(Testimony of J. Robert Patterson.)

ited partner with Mr. Klepper or Mr. Brown at any time?

A. Well, I never considered myself a partner. Since the question was raised I started looking back on the situation as to what the facts were, but I can't say now that I really felt I was a partner. No, I can't honestly say that, but maybe, in a sense of the word, I was. Certainly I was not a general partner, that is true, certainly, no question about that.

Q. Well, did you ever consider yourself a special or limited partner with Mr. Klepper and Mr. Brown? [104]

A. Well, you mean in my own mind?

Q. Yes.

A. Well, I considered myself this way, Mr. Dezen-dorf, I might answer your question this way, that if we didn't take any income in down there I wouldn't get any money. I mean I devoted myself to his work and he devoted himself to my work, and if there was any lack of income I was certainly trying to—it was certainly going to result in my disfavor, in that I wouldn't have that money to——

Q. You mentioned a firm name, did you not?

A. Yes.

Q. You were aware of the fact that you were practicing under what is commonly known as a firm name?

A. Yes, that is true.

Q. Did that indicate to you that you were holding yourself out as a partner of those other two gentlemen?

(Testimony of J. Robert Patterson.)

A. Well, really, to be honest with you, I never considered it at all.

Q. Didn't give it any thought?

A. Not very much.

The Court (McColloch, J.): Was Klepper wrong when he said you were getting fifty dollars a week before you came up here?

A. Yes, that is right, before I came up here I was getting fifty dollars a week.

The Court (McColloch, J.): Then, what salary did you get [105] as Assistant United States Attorney?

A. Thirty-eight hundred, I believe, your Honor, a year.

The Court (McColloch, J.): Other than your fifty dollars a week being cut off, your other arrangement continued the same as before with the Klepper organization after you came up here?

A. Yes, that is true. Of course, I could not do as much work as I had done before, but the same situation was still the same.

Q. (By Mr. Dezendorf): Did any impropriety occur to you when you were on one side of the Costello case and Mr. Klepper was on the other?

A. No, it did not. If it had, I would have stepped out and had someone else take the matter up to the Court, or something like that.

The Court (McColloch, J.): You gave Mr. Klepper's name to Costello's aunt as one of several attorneys that he might go to, didn't you?

A. Yes, one of several. Yes, I did, your Honor.

(Testimony of J. Robert Patterson.)

Mr. Dezendorf: May we have the Costello file, please, Mr. Clerk?

Q. In a criminal case pending in the Federal court, who ordinarily prepares the order releasing the bail? A. Who ordinarily what?

Q. Releasing the bail?

A. Ordinarily? Oh, I think the defendant's attorney would ordinarily do that. [106]

Q. Do you remember who did it in the Costello case?

A. Well, there is a possibility that I may have.

Q. As a matter of fact, you did dictate it down in your office and it is on United States Government paper, isn't it?

A. Well, if it is there I did it. I will say this, too, Mr. Dezendorf, this isn't the first time. We have done that many times.

Q. Was Mr. Klepper in your office when you dictated the order?

A. I can't say. I wouldn't know.

Mr. Dezendorf: Will you show this order to the witness, please, in case 16714.

A. Many times, Mr. Dezendorf. I might say that where the person is put on probation he ordinarily goes directly to the Probation Office and makes arrangement with the Probation officer and the Probation officer brings him over, many times, and says, "Get an order releasing this person's bail," and I have prepared many of those, many of those orders, where they have been represented by other counsel.

(Testimony of J. Robert Patterson.)

Q. In this case, however, you did that for Mr. Klepper, didn't you?

A. No, I didn't do it for him. I did it for Mr. Costello. Mr. Costello got his money, and he was the one that wanted it.

Q. Did you actually see the money handed over?

A. No, I did not. I had nothing to do with that.

Q. Do you recall what you did with that order after you prepared it? [107]

A. Well, when I prepared the orders I just left them here with the Clerk.

Q. No possible question of impropriety entered your mind of Mr. Klepper being on one side and you on the other?

A. No, there did not. No, there was not. I think I might say that I realize now that it might be the subject of criticism, I do, but here was a situation where the defendant was going to plead guilty; that was all there was going to be to do. I really didn't think much about it, to tell you the truth, and I certainly didn't feel conscious of any impropriety at the time I took Mr. Costello up. If I had I would have had Mr. Harr or one of the other boys take him up.

Q. Do you think that would have been proper?

A. No, now I don't think that would have been proper either.

Q. What should have happened?

A. I imagine Mr. Costello should have got another attorney if he wanted one.

Mr. Dezendorf: I think that is all.

Mr. Green: I think that is all.

(Testimony of J. Robert Patterson.)

Mr. Hess: I would like to ask Mr. Patterson a few questions, if I may, your Honor. You stated, Mr. Patterson, that there had been discussion on different times in the office about the Bowden case prior to this Saturday that you speak about before the case came on for trial?

A. Yes, I had talked to Vic about it, and I think to Mason, too. [108]

Mr. Hess: Well, you had talked it in the office? There had been some talk about the case, had there?

A. Yes, there had.

Mr. Hess: And I will ask you this question, if during one of those conversations the suggestion did not come up and I suggested—I don't know the time of this, but some time prior to this Saturday—that he may have been insane when he touched this bomb off?

A. I think that was on a Saturday.

Mr. Hess: Now, then, as a matter of fact, then I told you about a case that I had been in in Eastern Oregon where a man had—in an eternal triangle case, where a defense was used of that kind, of insanity?

A. Yes, that is right.

Mr. Hess: Now, Robert, at that time I didn't know, did I, in any respect that you were representing Bowden in that case?

A. Well, I certainly was of the impression that you did, Mr. Hess. I really feel now——

Mr. Hess: You had nothing to make you feel that I knew anything about that you were in that case at that time, did you, other than that you were talking about the case around the office?

(Testimony of J. Robert Patterson.)

A. That is how you and I and Vic happened to be discussing it, because I was going over on a Tuesday to take part in the defense of Mr. Bowden. [109]

Mr. Hess: Well, do you know of me knowing before something about the Bowden case or that there had been some talk of it?

A. I don't think—no, I had never discussed it with you, Mr. Hess, prior to this Saturday.

Mr. Hess: Well, at least you know this, that was the time that you know that I knew, whatever this conversation was, whether it was the Saturday before or shortly after the trial was commenced, at least at that conversation that you refer to the question was raised that you were going to be in that case? A. That is right.

Mr. Hess: Were going to be over there during the case? A. That is right.

Mr. Hess: At least, that is a fact, is it not?

A. Yes, it is.

Mr. Hess: Now, then, at that time, Mr. Patterson, you agreed with me that you would take no active part whatsoever in that case, did you not?

A. Well, I don't know what you mean by "active part." I told you that Mr. Hicks had complete charge of the defense, yes, and I was just going to sit at the counsel table.

Mr. Hess: Yes, you told me that is all you were going to do. A. Yes.

Mr. Hess: And I told you definitely to take no active part in that case. [110]

A. I believe you did.

Mr. Hess: Yes. A. Yes, I believe that is true.

(Testimony of J. Robert Patterson.)

Mr. Hess: And I did tell you there Mr. Patterson, that you should have cleared this matter with the Attorney General.

A. I think this was the way: You said, "I wish, Pat, you had told me sooner, so that we could have cleared it with the Attorney General. I think that, under the circumstances, we would have got clearance."

Mr. Hess: You were informed that the Attorney General would have to be informed of all these facts? A. Yes, I was.

Mr. Hess: I told you that?

A. Yes, you did.

Mr. Hess: That he would have to know all about this? A. Yes, you did.

Mr. Hess: You state there that the bulletin was not mentioned as a bulletin. In these little excerpts or these memorandums that I would send out to the various attorneys in the office, when I made a quotation like that I would state that it was quoted from a bulletin, wouldn't I, designated as U. S. Attorneys' bulletin?

A. Well, I think in instances that is true, yes.

Mr. Hess: I will ask you if you know and have found out since whether or not that bulletin was a very recent thing in [111] the office—or manual, rather? I don't mean bulletin. I wish to change that.

A. Yes, I think that is a recent thing.

Mr. Hess: And it had never been sent to our office until after—well, until some considerable length of time after a United States Attorneys' conference in Washington, D. C., in 1946?

(Testimony of J. Robert Patterson.)

A. I think that is true.

Mr. Hess: Do you know when we received that or when there was any acknowledgment, or have you found out since whether or not there was an acknowledgment, of that manual in the office? If you haven't looked at it——

A. No, the only thing I can remember is that I remember when Mr. Hahner came that you gave him a bulletin and said, "Take it home and read it." I think it was shortly before that that it arrived, but I am not sure about that.

Mr. Hess: You don't think, however, do you Mr. Patterson, that there was any talk, that is, this Saturday that you are talking about, about any case that I had ever represented anybody in insanity?

A. No, in murder cases over in Eastern Oregon.

Mr. Hess: Well, in other words, I had talked to you long before this Saturday about that, had I?

A. Well, I think we had had other discussions about that, but we were particularly talking about this Bowden case on this [112] Saturday.

Mr. Hess: Yes, but that was prior to this Saturday, that was some considerable length of time before you ever went over to the trial of the case, hadn't you mentioned that you had been attorney for Bowden in this divorce case?

A. I can't say for sure. I know I had talked to people in the office. I talked to Vic, I know, and I may have talked to you, before Saturday. I couldn't say for sure——

Mr. Hess: Referring back now to our conference on this Saturday, didn't I appear to you to

(Testimony of J. Robert Patterson.)

be alarmed that you were going over as defense counsel in that case, that you were mixed up in a murder case, and that I had known that you had been his attorney in the divorce proceeding before, according to conversations that had been made around the office?

A. I can't say that you were alarmed, Mr. Hess. I really can't say that.

Mr. Hess: I didn't like you going over there, did I, and I cautioned you very much not to take any active part in the case?

A. You told me not to take any active part, and you also told me you wished I had taken it up with you sooner so we could have taken it up with the Attorney General.

Mr. Hess: And I told you it would have to be taken up with him? A. Yes, you did. [113]

The Court (McColloch, J.): Did he read you this paragraph of the manual?

A. No, he did not. I still didn't know of any manual at that time, and I might say, too, that even at that time, on Saturday, and on Tuesday morning when I went over in the Bowden case, I didn't feel conscious that I was violating any ethics.

Mr. Hess: I will ask you if you know of this now, whether you knew it then, whether or not I had asked various attorneys in the office, assistants, to read that manual, when it first came out?

A. Well, I had never heard of it, Mr. Hess.

Mr. Hess: Well, didn't you know——

A. I know now that subsequently you certainly have, when Mr. Hahner came.

(Testimony of J. Robert Patterson.)

Mr. Hess: I will ask you this question, too, whether or not you know that Mr. Harr had had that thing on his desk prior to this time, and I had given instructions to different members that that was never to leave the office over night, but the members should make themselves acquainted with it?

A. I am honest when I say that I never knew there was an Attorney General's manual.

Mr. Hess: But you don't know what happened with reference to the other men in the office, the Chief Assistant in the office?

A. No, I don't. [114]

The Court (Fee, J.): Can you tell us when the manual was put out?

Mr. Hess: Well, your Honor, I can't tell you exactly, but I can tell you the date of the letter where we acknowledged receipt of it,—August 15, 1946.

The Court (McColloch, J.): When was this case tried?

A. This was December, 1946, just a year ago now.

The Court (McColloch, J.): Well, I can tell all of you that there were instructions in the United States Attorney's office to this same effect, whether under the name of a manual or not, before Mr. Hess ever became the United States Attorney, because deputies had discussed it with me at times during the past ten years, before you came up here.

Mr. Hess: Your Honor, I think there was a United States Attorney's manual put out some

(Testimony of J. Robert Patterson.)

time in October, 1929. I don't believe that manual had ever been revised. I have looked it over since this matter came up. I don't believe that has been revised since 1929.

The Court (McColloch, J.): Two deputies before you became United States Attorney have told me that they knew that there was this prohibition against United States Attorneys practicing in criminal cases in State courts.

Mr. Hess: That may be, your Honor. I know that this manual was made in that day to United States Attorneys and Marshals, and maybe to someone else. I don't know anything about the form of the manual.

The Court (McColloch, J.): I don't care anything about the form. There was a prohibition in one to the Assistant United States Attorneys, because they have told me so.

Mr. Hess: Well, I don't know anything about that.

The Court (McColloch, J.): Well, I am advising you now, so that there may be no mistake about this date in 1946 being a new promulgation made in 1946. That is not correct.

Mr. Hess: Well, if your Honors please, I never made any such statement, if you are referring to me.

The Court (McColloch, J.): I am not referring to anybody.

Mr. Hess: I am just stating when this manual came into our office, but, as to previous manuals, there may have been manuals all during the period

(Testimony of J. Robert Patterson.)

since there was an Attorney General; I don't know.

The Court (McColloch, J.): Do you mean, Mr. Hess, that you didn't know there was a manual before August, 1946?

Mr. Hess: I knew there was such a manual, yes, sir, I did. I knew that there was a manual in October, 1928, an old manual.

The Court (McColloch, J.): Were you familiar with it?

Mr. Hess: I was familiar with portions of it.

The Court (McColloch, J.): Doesn't that contain this same prohibition?

Mr. Hess: I think it is similar. Now, I can't say that it is in the exact language, but it is a similar provision, [116] yes, sir.

The Court (McColloch, J.): I have no doubt that it is.

Mr. Hess: It may have been little used. I don't know about that. I know when I came into the office I started to inform myself as to the provisions of the manual and I knew of things going over my desk that were against that manual and that is why I issued these statements, and I want to state here for the record that I had told, perhaps not all of the lawyers in the office, but intended to inform them, about that manual, that it was there, and of course it is quite a lengthy book, lots of instructions in the manual.

Mr. Green: I think that is all, Mr. Patterson.

Mr. Dezendorf: That is all.

(Witness excused.)

Mr. Green: Call Mr. Twining. [117]

EDWARD B. TWINING

was thereupon produced as a witness in behalf of J. Robert Patterson and was examined and testified as follows:

The Clerk: Your name is Edward B. Twining?

A. Yes, sir.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Green:

Q. You are a lawyer? A. Yes.

Q. One of the Assistant United States Attorneys? A. That is right.

Q. Are you Chief Deputy?

A. I am now.

Q. How long have you been in the United States Attorney's office?

A. I came there in 1939 and was there until May of 1942, was in the army for three years and came back in 1945 and have been there since.

Q. How long have you been admitted to practice, Ned? A. Since 1936.

Q. You are a graduate of what school?

A. University of Oregon and Northwestern College of Law.

Q. Now, Ned, in your position as Assistant United States Attorney, are you familiar with the method that the office has [118] had with respect to handling of claims for seamen where money had been paid into the Clerk's registry?

A. Yes, I am familiar with it.

Q. Well, would you go back and tell us what the custom was, say, two years ago, what the practice was?

(Testimony of Edward B. Twining.)

A. Well, ever since I have been in the office, with the exception of the time I was away, we had evolved a practice here of helping these seamen. They would come in periodically. We would help them with their affidavits and their petitions, and in no instance in my own experience, I am quite sure there is none, did we ever have any protests from interested parties, that is, from the Shipping Commissioner or the vessel owners, consequently, the thing ran smoothly and we merely appeared *ex parte* and there was no contest of any kind or no opposition of interest. I had some doubts about that whole thing. The first one I ever experienced I remember well. I was in the office alone, just new there, and Dillard and Donagh were away, and I had great misgivings about the thing. I found that that had been the policy, and was, and so ran along with it. Since we had no contest, it never came to my attention particularly, but shortly after the turn of the year in 1947 these Shipping Commissioners and shipping companies apparently thought it was time to stop the post-war desertions, or something, because for the first time they began to log these sailors and they protested their payment, and just about coincident with the time that this [119] matter came up here, I think on March 24th, a sailor came in, and I checked with the Shipping Commissioner and with the steamship company and they informed me that he was logged as a deserter and was a willful deserter. I thereupon went to the court immediately and stated my doubts, that I thought we were an

(Testimony of Edward B. Twining.)

antagonistic party and were carrying water on both shoulders, and on that point of view refused to represent the sailors. These seamen would come in and, of course, if you talked to them at all, they might tell you the whole score,—they would pretend to miss the boat or something, and I was afraid we would get into it and I felt that we were there, our purpose as United States Attorneys, to secure forfeiture of this money if they were willful deserters.

The Court (McColloch, J.): Mr. Green, I want to make something plain to you for myself. The point about the Martin case with me is not that he was a sailor. It is that he was a parolee. I don't think that any Government officer has any right to make money off of Federal probationers or parolees that come within their ken in the ordinary course of their official business. The sailor angle of it, to me, is entirely unimportant in the Martin case.

Mr. Green: Well, the matters that are—the charge is, your Honor, “offered to represent one Joseph Martin for a fee in connection with proceedings to procure the release of certain wages earned by the said Joseph Martin which were [120] deposited in the registry of the United States District Court at San Francisco, California.”

The Court (McColloch, J.): It states that he was a parolee, doesn't it?

Mr. Green: I will read the full paragraph.

The Court (McColloch, J.): Doesn't it say that?

Mr. Green: No,—“although said Joseph Martin

(Testimony of Edward B. Twining.)

was referred to him in his capacity as Assistant United States Attorney and such matters are customarily handled by United States Attorneys without compensation therefor."

The Court (McColloch, J.): Well, you know that he was a parolee. You know it now.

Mr. Green: Why, I know it now, yes.

The Court (McColloch, J.): And Mr. Patterson knew it at the time.

Mr. Green: Mr. McFarland brought him in, but the charge we are called upon to face here is the charge that we asked this man to pay a fee, and the——

The Court (McColloch, J.): And the gravamen of it to me is, not that he was a seaman, it is that he was a parolee, whether he was a seaman or what it was. It just happens that he was a seamen and had some money.

Mr. Green: I will say this with respect to that, if this is going to be considered from that standpoint it is an entirely new charge—— [121]

The Court (McColloch, J.): Then you had better prepare to defend it and take more time.

Mr. Green: I would suggest that an amended complaint be filed, so that we know just what the charge is. Now, how can we meet a situation—because we had no knowledge of it before. We knew he was a parolee, that is true, because Mr. McFarland brought him in, but certainly there was no answer to it that he was a parolee. There were no pleadings brought up on it.

The Court (McColloch, J.): It is because you

(Testimony of Edward B. Twining.)

were a very able lawyer and I knew you might say just what you have just said that I told you what I did, so you wouldn't say that you were taken by surprise at the end of the proceeding.

Mr. Green: I suggest now that an amended charge be filed and that we be permitted to answer, and that we be permitted to consider it from that standpoint, because this is the way it was referred to me.

The Court (McColloch, J.): Judge Fee has charge of the procedural end of it. He may discuss that with you; I don't know.

The Court (Fee, J.): As far as I am concerned, I will consider the charge as laid.

Mr. Green: I beg your pardon, I didn't understand your Honor.

The Court (Fee, J.): As far as I am concerned, I will consider the charge as laid. Proceed. [122]

Mr. Green: All right. Then may I inquire from the court reporter how that last portion of Mr. Twining's testimony reads,—or do you know just what you were talking about?

A. I think so. When this sailor came in and I was informed that he had a charge laid against him by the Shipping Commissioner and the log-book and the shipping company, I went to see Judge McColloch and informed him of my doubts. Judge McColloch appointed an attorney for him, and from that time forward that has been the procedure followed. That was about the 25th or 26th of March. I immediately wrote the Attorney General stating my doubts about the whole situation. I did

(Testimony of Edward B. Twining.)

not get an answer, however, until June 12th, somewhere in that time, and they then informed us that they considered our duties as United States Attorneys incompatible as representing a seaman in any respect. That matter was conveyed to the Court, and, as I say, since March, I think the last week in March, every case thereafter has been handled by appointment of an attorney or private attorney and we have proceeded as an antagonistic party since the last of March.

Q. Representing the United States of America?

A. That is right.

Q. And it has been your practice, it is your practice now, under the law, that you attempt to get the Court to do what with this fund? Where does the fund go?

A. If we have proof or reason to believe from the evidence [123] that the man is a deserter, it is our endeavor to secure that fund into the general treasury of the United States. I believe it is devoted to charitable work among the Seamen's Union, or something of the kind. But, anyway, our endeavor is to oppose the order granting the sailor his wages and effects deposited in court.

Q. Well, then, as I get the picture now, Ned—or, let me ask you, first, do you have any knowledge of how this practice came about in the first instance of the Attorney General or the United States Attorney in this district representing and actively appearing before the Court on behalf of the seamen?

A. Well, as I say, to the best of my knowledge,

(Testimony of Edward B. Twining.)

I don't think we ever had a contested case or any suggestion that the man was a deserter. Furthermore, the seaman is more or less of a privileged character in Federal Court. I believe he is entitled to appear, and, because of the nature of his duties and his trenchant status as a seaman, no doubt has led to a great deal of confusion in the Court. I believe this Court evolved the policy of our office assisting him to prepare his documents and secure his money, for that reason, but there was so much confusion about it and there was never any contest about it, and I don't think it ever occurred to anyone—the amounts were always small, in my experience, probably a hundred and twenty-five or a hundred and forty at the outside—I have handled many of them, and they all went off in the same order. [124] We cleared the decks with respect to all possible opposing parties, they said no, no objection to his getting his money, and we cleared his money. I think that policy was evolved to keep things moving and to avoid confusion. It took an opposing interest expressed to wake me up completely on it, in the first instance I know of anyone charged as a deserter.

Q. If Martin had come in to you at that particular time—this is alleged on or about the 12th day of February, 1947—what would you have done?

A. I would have told him I couldn't help him. I would have told him to go to San Francisco or to contact the United States Attorney at San Francisco or get his own attorney.

(Testimony of Edward B. Twining.)

Q. You were with Bob Patterson in the office for how many years?

A. Well, since he came in '45.

Q. How did you find him with respect to his ability to carry on work, to do work, to carry his part of the load?

A. Well, in that respect, I think he was probably very exceptional. He was very industrious and energetic. He seemed to always be willing to accept more work and more work. I never heard him kick about it. I thought he had too much work. He had a faculty of taking an armload of files and getting to the bottom of it and plunging along with it. I think in that respect that he was a remarkably fast and efficient worker.

Mr. Green: I think you may cross-examine.

Mr. Dezendorf: No questions. [125]

The Court (Fee, J.): How much money have you made off of this, Ned?

A. Off of what?

The Court (Fee, J.): Charging seamen fees for collecting money for them?

A. Well, I have never had a situation like it, your Honor.

The Court (Fee, J.): These boys that you represented in this court, you didn't charge any money for it?

A. No.

The Court (Fee, J.): Wouldn't that make some difference in your mind?

A. A difference in my mind?

The Court (Fee, J.): Wouldn't that make a

(Testimony of Edward B. Twining.)

difference in your mind, if you offered to charge one of these seamen a fee—

A. In this court?

The Court (Fee, J.): If a seaman was referred to you for getting a fund back from San Francisco, would you offer to charge him a fee?

A. No, I wouldn't, your Honor, but I think in fairness to Mr. Patterson in this case, really, my feeling is different than his, because, out of excess of caution, perhaps, I wouldn't want anything to do with it at all, if I understand your Honor's question.

The Court (Fee, J.): Yes. In other words, you act on ethical principles. [126]

A. Well, let's say again, in honesty, your Honor, if that is an indication that I think that his conduct was unethical in that case, I think that he was misled, and I don't understand from the facts in this case, I don't understand and haven't since the outset of this case, that Patterson offered to do this for a fee. I don't believe that, and I never thought that. I thought that he was using the thing more as an example when it came to that phase. I may be wrong, but I know Patterson was very badly crowded and worked too fast, he was impulsive. I was worried about it. He took off down the alley in a hurry lots of times, and, therefore, when I talked to him first about this thing I got the impression, I thought that Patterson was saying to this fellow, "This is what I would have to do." I don't think he ever dreamed that the man would come back. I think he did everything he could to

(Testimony of Edward B. Twining.)

kick him out. In short, if I make myself clear, I have had people in there many times, some of them are hard to make understand, like in these veterans' situations, we would have to represent them here—I can't do it, when they come in from another state, I can't tell them what we would have to do. I would say, "I would have to charge you three hundred dollars", never intending to do it.

The Court (Fee, J.): Well, now, you never have been criticized by this Court, nor has the Court ever indicated that the Court's own policy was improper in allowing the United States Attorney's office to represent these seamen, who are [127] assumed to be wards of the Court, during the period when there was no contest. A. That is right.

The Court (Fee, J.): And it was only when you very properly brought up the case with Judge McColloch and said that you thought there was a conflict of interest because there was now a contest that this Court then changed its policy and, in accordance with the policies you suggested, thereafter handled seamen's cases in a different manner.

A. Yes.

The Court (Fee, J.): And neither of the Judges of this Court have ever criticized that policy.

A. No.

The Court (Fee, J.): And, whatever the interpretation of the facts—I am not stating what my interpretation of the facts is now—but there is a vast difference between charging a seaman a fee for getting money for him and acting for him as an officer of the Court, in your mind?

(Testimony of Edward B. Twining.)

A. Yes.

The Court (Fee, J.): Yes, of course. That is all.

Mr. Hess: There is one question I would like to ask Mr. Twining along this line.

Mr. Green: All right, go ahead.

Mr. Hess: I will ask you if this isn't a fact, Mr. Twining, that after this matter relative to the charge against Mr. [128] Patterson had come up along this line, if this matter was not taken up and discussed with the Attorney General's office as to whether or not it was proper for us to prepare complaints in behalf of seamen and appear on behalf of the seamen here in court?

A. Yes, I testified to that, that the Attorney General finally answered our letter and stated that our duty as United States Attorneys was incompatible with any attempt to represent a seaman in respect to the matter of his wages or matters on deposit in the Court.

Mr. Hess: That is all.

Mr. Green: Q. As I get it, what the Attorney General said, he said that the law said that you were an antagonistic party?

A. That is correct.

The Court (Fee, J.): I make, in that regard, the same statement that Judge McColloch has made: There is no criticism by either of the Judges or by this Court on the policy of the United States Attorney of bringing the seamen into Court and asking for any money that was on deposit during the time when there was no contest filed here either

(Testimony of Edward B. Twining.)

by the United States or by the Shipping Commissioner, because they were assumed to be wards of the Court and the Court placed them under the aegis of its protection, so that is not in question, and, in so far as that is concerned, Mr. Patterson was fully justified in acting for those personally, but the point about it is whether [129] he offered to charge him a fee. That is a question of fact.

Mr. Green: Which we, of course, deny.

The Court (Fee, J.): Yes, I understand.

Mr. Green: Which we, of course, deny, and we are charged with saying that we wanted a fee when the matter had been customarily handled without compensation theretofore.

The Court (Fee, J.): That is correct.

Mr. Green: I think that is all, Ned. Wait just a minute. Just one question, Mr. Twining: Was it ever the policy of the United States Attorney's office to represent seamen, even when you were appearing for them before the Court, to represent them in San Francisco or in Seattle or in other places?

A. No, we never had such a case, I am quite sure.

Q. You would do it locally here?

A. That is right.

Mr. Green: That is all.

(Witness excused.)

Mr. Green: That is all our testimony, your Honors.

Mr. Dezendorf: That is all. One thing I didn't mention before. I don't know whether the Court has the Rules of Professional Conduct which were adopted by the Oregon State Bar. They are very closely akin to the Canons of Ethics of the American Bar Association. I will hand those up with the briefs.

The Court: There has been a lot of chat about the Attorney [130] General's manual. Is a copy of that submitted?

Mr. Dezendorf: No. As far as I know, it is not available to me. I asked for it.

The Court (Fee, J.): Is it available to the Court?

Mr. Hess: If your Honors please, I didn't get that question. The Court's voice was a little low for me.

The Court (Fee, J.): I say, is there a copy of the Attorney General's manual available for the Court?

Mr. Hess: If your Honor please, yes, your Honor, I have the Attorney General's manual in my office and your Honors are entitled to it any time that you desire.

The Court (Fee, J.): All right, I hope that during the course of the consideration of this case when I send down for it I can have it.

Mr. Hess: Yes, your Honor.

Mr. Green: Now, does that apply to us? May we see it?

Mr. Hess: Yes, but at the office. I regard that as confidential matter between the Attorney General and the United States Attorneys. There are

many things that are confidential in that manual. I wouldn't want it to go out to law firms. I wouldn't want it, under any circumstances, wouldn't allow it to go out to an attorney's office, but as between the Court and the office I think that is proper.

The Court (Fee, J.): All right, I will waive that, if there is objection. [131]

Mr. Green: Well, your Honor, if there is something that is going to be before the Court, I ought to have some way of knowing what it is.

The Court (Fee, J.): Well, as I say, I will waive that.

Mr. Green: Although I am perfectly willing to go to Mr. Hess' office, but from the statement he has made that it is confidential matter I don't think I should be permitted to see it.

The Court (McColloch, J.): Well, the pertinent part of it is admitted in the pleadings.

Mr. Green: I didn't understand.

The Court (McColloch, J.): I say, it is admitted on the pleadings, the pertinent parts.

Mr. Green: Well, we quote pertinent parts of it, yes.

The Court (Fee, J.): As I say, I won't call for it.

Mr. Hess: I might state that that portion is correctly quoted by the defendant.

The Court (Fee, J.): All right.

Mr. Green: We rest.

The Court (Fee, J.): What do you want to do about submission?

Mr. Green: Well, your Honor has indicated that

you do not think the law is involved in this situation. Of course, I disagree with your Honor on that point.

The Court (Fee, J.): I didn't mean that there isn't any [132] law involved in this case, but I mean that an argument of law as to whether one of the parties in an admiralty case in the Supreme Court or some other prevailed in a particular situation has, in my mind, very little to do with it. I think the only thing that is involved there is the attitude of Mr. Patterson. I think the only thing that is involved is his mental attitude.

Mr. Green: Well, I think, of course, that what decisions have been rendered might throw some justification upon what his mental attitude was, and I would like to submit to this Court a brief, also, on this question of the special or limited partnership, because I very frankly tell you until I got into this case I didn't know that such a thing existed with respect to legal practice, but I find that there are a great many cases in Federal and State courts where that is recognized and that question is involved, and I think that becomes very important, so I would like to, I think, submit a written statement to this Court, and then after those papers are submitted I would like to have the matter argued before the Court and I would like to make a presentation on it.

The Court (Fee, J.): Well, I certainly am not going to deny you the right to make a presentation on it.

Mr. Green: I would like to have—of course, the holidays are coming on, it is pretty hard to get up

a brief right at this time, and I don't want to ask any excessive time, because we haven't any disposition to delay the case. It was delayed [133] from a certain time in November because I was out of town, and we asked—I simply remind your Honor that we asked, in June or July sometime, that we be given a hearing; your Honor will recall I was before the Court with Mr. Dezendorf and we asked at that time to get a hearing, and we were not notified until the 29th, I believe, was the first date, that we would be heard—I believe I am right on that. So we haven't been responsible for any delay on this hearing, I don't think. No, I think there was a date given us earlier, in November, for the 13th, and I was going to leave town and I did ask for further time, so we are responsible for that much postponement.

The Court (Fee, J.): Well, I am not disposed to criticize you on that. I realize that the Court was not in a position to take up the matter at the time that you requested it, and I am not charging you with any delay. I realize that your engagements subsequently became such that you had to be granted a postponement, and the Court was very glad to grant it, and the Court will now give you such time as you wish to make the presentation, and I might say that if you wish to make any argument upon the question of these admiralty cases, why, of course the Court will hear you.

Mr. Green: Well, what I would prefer, that I submit a brief, and if Mr. Dezendorf desires to answer it that he submit a brief, then the matter

be argued before the Court when you have the briefs in your hands then. I would prefer that, rather than [134] argue it and submit the briefs later on.

The Court (Fee, J.): How much time do you want to submit the briefs?

Mr. Green: Well, Christmas is almost here. I would like until sometime about the 20th of January. I would like to have two or three weeks after New Years.

The Court (Fee, J.): What time in January?

Mr. Green: I said about the 20th. I am requesting that.

The Court (Fee, J.): Mr. Dezendorf, what do you desire to do?

Mr. Dezendorf: It is immaterial to me, your Honor. Anything that is agreeable.

The Court (Fee, J.): All right, can you prepare a brief to be submitted approximately simultaneously, if you wish to brief your side of it?

Mr. Dezendorf: Yes.

The Court (Fee, J.): All right, each side will submit a brief on the 20th of January, and at that time I will set the case for presentation on the 22nd at 10:00 o'clock. I do not want to burden you now, Mr. Dezendorf, if there is any date that is here suggested that does not meet your convenience.

Mr. Dezendorf: That is perfectly all right.

The Court (Fee, J.): Are there further matters now, gentlemen? Court is now in adjournment until tomorrow morning at 10:00 o'clock. [135]

(Whereupon, at 5:40 o'clock p.m., Friday, December 19, 1947, oral testimony and proceedings herein were concluded.) [136]

Monday, June 28, 1948, at the hour of 4:10 o'clock p.m., further proceedings herein were had before the Honorable James Alger Fee and the Honorable Claude McColloch, Judges of the above-entitled Court, as follows:

The Court (Fee, J.): In the matter of J. Robert Patterson, the Judges of the Court referred the matter to the Committee on Discipline, and they have returned a report which is signed by David Lloyd Davies, Samuel H. Martin, Robert A. Leedy and James C. Dezendorf, recommending that J. Robert Patterson be permanently disbarred and his name stricken from the roll of the attorneys entitled to practice in this Court. The matter is now for final submission.

Mr. Green: Your Honors, we haven't any argument to make to this Court. There hasn't been anything that has been presented to you that has changed our minds from what we have presented to the Court in the brief. The only thing that we can say, that I went over this brief again today and I went over the testimony again today—the only thing that I can say, that there is no element of willful misconduct, that there is no element of willful turpitude, moral dishonesty, there isn't anything in any of these charges, or any of those allegations, that justifies disbarment, and I think that the matter has been fully presented to the Court—at least, we attempted to in our brief, and

I know that the Court [137] has been over that and I don't know of anything that I could add. If the Court has any questions they want to ask, I would be very happy to answer them if I am able to do so.

The Court (Fee, J.): On that basis, the Committee having made the report, the Court at this time adopts the report and directs the Committee to formulate findings of fact and conclusions of law and enter a form of order of disbarment.

At this time the Court enters an order of disbarment and strikes the name of J. Robert Patterson from the roll of attorneys. The findings and order will be entered of record when they are finally formulated.

Mr. Green: Well, will there be an order entered on this statement that your Honor has just made that his name is stricken from the bar of the Federal Court— When will that formal order be entered?

The Court (Fee, J.): The Committee is directed to formulate findings to establish the basis upon which the Court acts. Upon the entry of those findings the order will be entered of record.

Mr. Green: Do I understand that an order is now here, that your Honor has made an order striking his name from the Federal bar, that that is present now? Is that an existing condition now?

The Court (Fee, J.): That will go into effect when the findings and an order are entered on the journal of the Court.

Mr. Green: In other words, I am asking the question, then, [138] there is no change of status, in respect to this Court, of J. Robert Patterson at this time, and will not be until there are findings of fact and the order has been entered formally, is that correct?

The Court (Fee, J.): That is correct.

Mr. Green: Well, I assume that those findings and order, a copy will be submitted to me?

The Court (Fee, J.): Yes. Yes, they will be submitted to you before they are entered.

Mr. Dezendorf: There is one matter of reciprocity which the Committee is in doubt about and on which we would like your advice. In the past, when members of the Oregon bar have been disbarred by the Oregon State Bar in its regular procedures, the Oregon State Bar has referred to your Committee the record in those proceedings, along with a full record of the action taken by the Oregon State Bar. On one or two occasions in the past the question has arisen in our mind as to whether we wished, or the Court wished, in proceedings which originated solely in this Court—whether you wished to make the record in those proceedings available to the Oregon State Bar, and this case is the one which brings it most clearly in view, because it is a proceeding which initiates here, without any earlier proceedings in the Oregon State Bar records at all.

The Court (Fee, J.): It is the opinion of the Court that we will initiate no steps looking toward that development, but [139] if the Oregon State

Bar initiates proceedings, then we will take the question under consideration.

Mr. Dezendorf: Thank you.

The Court (Fee, J.): Court is in adjournment.

(Whereupon, at 4:15 o'clock p.m., June 28, 1948, proceedings herein on said date were concluded, the Court taking an adjournment.)

Friday, July 30, 1948, at the hour of 11:25 o'clock a.m., further proceedings herein were had before the above-entitled Court, as follows:

Additional Appearances: Honorable Henry L. Hess, United States Attorney.

The Court (Fee, J.): Now, Mr. Green, I understood that you had asked for a hearing at one time upon the findings, and after I looked over the findings myself I was not quite satisfied with them for certain reasons which I will divulge a little later, so after you withdrew your request for findings I told Mr. Mundorff that we would go ahead with the matter and bring you in for whatever you had to say, and then I have some comments of my own.

Mr. Green: May I proceed now?

The Court (Fee, J.): Yes, please.

Mr. Green: Well, your Honors, we have filed a motion to amend the proposed findings of fact, and if these have been studied by the Court, together with the record,—And I assume that they have been—I will make my remarks very short, and if you have the proposed findings as submitted by the Committee, on Page 2, beginning in Line 10, the proposed findings of the Committee read as

follows: "All of the matters herein concerned occurred while Mr. Patterson held the office of Assistant U. S. Attorney and while he was engaged in private practice in [141] association with Milton R. Klepper and McDannell Brown."

I think the record bears out our objection, and what we have asked in our motion is that that be changed to read:

"All of the matters contained in Paragraphs III, IV and VI occurred while Mr. Patterson held the office of Assistant U. S. Attorney and while he was engaged in private practice in association with Milton R. Klepper and McDannell Brown and after the filing of assumed name certificate in Multnomah County and doing business under a firm name." Now, a reason for that,—And I stop at that point—that these matters that are set forth in Paragraphs III, IV and VI did occur after the assumed name certificate was filed, but it would be inferred, I think, by anybody reading the findings proposed by the Committee that all of the things occurred after the assumed name certificate had been filed.

Then we ask that this other sentence be added, and purely from the standpoint of getting at the ultimate facts: "The matters contained in Paragraphs II and V occurred while Mr. Patterson held the office of Assistant United States Attorney and while he was engaged in private practice in association with Milton R. Klepper, but before any assumed name certificate had been filed in Multnomah County and before the findings had been

submitted in the firm name." I think that was before any of the matters in the testimony.

The Court (Fee, J.): How about it, Mr. Dezen-dorf? Is that [142] in accordance with your understanding of the record?

Mr. Dezen-dorf: With respect to Paragraph V, the dates are given specifically; and in Paragraph VI the date is given specifically; so that I really don't see that we are in any disagreement on it and I think the findings as now drawn show that. I would have to check the record again in the Hughes case to verify the date, though I am pretty well convinced from my recollection that the Hughes case and everything that happened in it was prior to the date mentioned in Paragraph VI, which was October 2nd, 1946. So that it is very possible that there is nothing between counsel.

The Court (Fee, J.): The Court will make the amendment if the record checks out in accordance with your suggestion, Mr. Green, and personally I think it does.

Mr. Green: Now, our second paragraph of my motion to amend the proposed findings of fact,—and this is solely for the purpose of having these findings conform to the record—and that is by striking the word "employed" appearing in Line 17 on Page 2, and inserting the words in place thereof "as a passenger." In other words, the findings say, "That J. Robert Patterson represented Marvin L. Hughes who was injured while employed on a vessel operated by the Alaska Steamship Company." Now, Marvin L. Hughes was a passenger on the steamship and not an employee.

Mr. Dezendorf: That is correct, according to the record.

The Court (Fee, J.): The amendment may be made. [143]

Mr. Dezendorf: And the file shows that every thing in the Hughes case did happen before October 2nd, '46, so that the proposed change would not be out of order.

Mr. Green: Now, our third—well, subdivision of Paragraph II, asks to strike the following phrase which appears beginning on Line 19 of Paragraph II of the findings of fact, where these words are quoted in the proposed findings of fact, in Line 19—That is, between Line 19 and Line 20—It says, “before the suit was commenced Mr. Patterson knew,” and we ask that there be inserted the following words, “it became apparent to Mr. Patterson after the defendant’s answer was filed.”

Now, the record on that, your Honor, in the transcript, on Page 95 of the transcript,—and this is under cross-examination by Mr. Dezendorf—this question was propounded to Mr. Patterson:

“Q. As I understand it, it became apparent very early in the case that the defense was going to contend that the United States was the proper party defendant?

“A. Yes, in their answer they raised that question.”

Now, I think their reason, perhaps, for asking that is that that be amended to conform to the record. I think that that was the time that Mr. Patterson knew that the United States was going to be made a proper party defendant, and I think that is

a fair interpretation to be placed upon this testimony here and, so far as I have been able to determine, that is the only [144] testimony that touches upon that particular feature of the case.

The Court (Fee, J.): Well, of course, there is a little more involved than that, Mr. Green. That is, the Court could conclude, as I think the Court will have to conclude, in some of these instances Mr. Patterson knew of certain things before they were specifically called to his attention by someone else. In other words, I think the Court could make such a finding. I would amend it by saying that "Mr. Patterson admits that he knew when the answer was filed."

Mr. Green: Yes. Now, the reason that I have made that amendment, your Honor, is because right at that time this law with respect to the agreements, and so forth and so on, was and still is in a condition of flux, and so, therefore, I think that lawyers might have thought that such-and-such a defense; but when we come now to the statement that Mr. Patterson knew what the defense would be—because we have all had experiences in a situation of that kind, until we just didn't know,—

The Court (Fee, J.): Well, I have no objection, if you want to accept my change, to saying that "Mr. Patterson admits that on a certain day he knew of the filing of the answer"—If you will accept that, I will amend the finding.

Mr. Green: I think that is a fair statement of what the record shows.

The Court (Fee, J.): All right, we will amend the findings in that particular. [145]

Mr. Green: Now, our third paragraph, we ask that there be stricken the following words from Paragraph III of the findings of fact, beginning on Line 7, Paragraph III:—Now, Line 7 in Paragraph III is the proposed finding of the Committee, and that portion to which we refer reads as follows: “that at the time he accepted employment”—just concerning ourselves with those words—Now, we think that it is a fair statement of what the actual facts were and what the record shows that there should be inserted, “that subsequent to the time he accepted employment and before the trial.”

Now, this comes out as a part—And I base this as part of the record appearing on Page 93, where your Honor was asking Mr. Patterson some questions, and you asked Mr. Patterson, you said, “Mr. Patterson, your present answer omits a portion, ‘although he expected to be called as a witness at the trial.’ I take it that you mean by your statement of it now that at the time you took the employment that you did not expect to be called as a witness, but——” Then the answer, “I did not even consider that, your Honor.

Then,

“The Court (Fee, J.): But subsequently, and before the trial,——” And Mr. Patterson says, “That is true.”

“The Court (Fee, J.): ——you did expect to be called, because Mr. Hicks said so?

“A. There was a possibility, yes.”

That was made in response to your Honor’s ques-

tion, and [146] what we have asked here is that the findings of fact be amended to comply with what I think the record substantiates.

The Court (Fee, J.): What do you think about that, Mr. Dezendorf?

Mr. Dezendorf: I think a consideration of Mr. Patterson's whole testimony on that point indicates very clearly that the reason he accepted employment was because he had represented the parties in a divorce suit and he anticipated at the very outset that he would perhaps be, or should perhaps be, a witness in the case; and while it is true that the portion of the record which Mr. Green read establishes his point, to me there is no other way of explaining why Mr. Patterson got into it in the first place than his expectation that because of his previous knowledge he would have to be a witness, and that is very obvious, that he would have to go into the case because of his prior representation of the parties.

Mr. Green: I think that is a very unfair statement. I think the record shows that he had represented Mr. Bowden previously, but with respect to the fact that he anticipated—And I am unable to find anything in the record that he expected anything when he accepted the employment—to say that Mr. Patterson is going to anticipate that he is going to be called as a witness because he represented people in a divorce proceeding is something beyond the ken of this record entirely.

May I read one other part of the record, your Honor, [147] on this same point?

The Court: Yes.

Mr. Green: This is still on Page 93. This is in response to a question by myself on direct examination:

“Q. Now, when this Bowden trial started, or before the Bowden trial, what was in your mind in respect to your expectation of being called as a witness?

“A. Well, it never entered my mind, but later, after Mr. Hicks and I had talked about it and after he had started to prepare the defense, he said that ‘It may be that the State will bring in all this stuff about the divorce case, and in that case you will probably have to be a witness.’ ”

Now, I say, I make this statement, that he anticipated this before trial, but not before he accepted employment, in conformance with the facts.

The Court (Fee, J.): Mr. Green, I think on that point that I will accept, if you agree, the same formula that I suggested before, that “Mr. Patterson admitted,” not saying anything about the prior question,—that he “admitted that just at the time of the preparation of the defense he knew that there was a possibility of his being a witness.”

Mr. Green: I think that is what he did admit while he was on the witness stand, your Honor, so I think that conforms to the facts. [148]

The Court: Yes, that conforms to the record and contains no indication that he knew of it at the beginning, at the time of trial. As a matter of fact, that is not the point of the charge here. That he knew he was going to be a witness when he was Assistant United States Attorney,—That is the point of this charge.

Mr. Green: Then do I take it that that finding will be amended as we request, "that subsequent to the time of taking employment and before trial," so as to make this read, "subsequent to the time of taking this employment and before trial that Mr. Patterson anticipated that he might be called at the time of trial?"

The Court (Fee, J.): Yes, if you place that in the form of an admission, Mr. Patterson admits that.

Mr. Green: Then if this is made to read as follows, beginning with the word "that" in Line 7 of proposed finding numbered III, "that subsequent to the time he accepted employment and before the trial Mr. Patterson admits that he anticipated that he might have to be a witness at the trial?"

The Court (Fee, J.): Have you any suggestions further on that, Mr. Dezendorf?

Mr. Dezendorf: No, I haven't.

Mr. Green: Now, with respect to our motion, Paragraph IV, striking from Paragraph V of the findings of fact, beginning on Line 6 of Page 4, "he considered himself as a special or limited [149] partner of Milton R. Klepper, although, in fact,"—And add the word "existed" on Line 8, and we want that portion stricken and add the following words—Well, I don't even find my own words now, your Honors. Oh, yes,—Those words, we ask that they be stricken because it does not conform with the record, there is no testimony, and then that after the word "existed" in Line 8 there be inserted "between Milton R. Klepper and J. Robert Patterson." In other words, that would make the

sentence complete. My whole objective in getting this whole situation here is simply to make the record, as we state, conform entirely with the facts.

Mr. Dezendorf: I think both the testimony of Mr. Patterson and of Mr. Klepper fully support the statements made there.

Mr. Green: Mr. Patterson did answer at that time, I think, specifically, in the record at Page 104,—This is after Mr. Brown came into the situation——

“Q. Well, did you ever consider yourself a special or limited partner with Mr. Klepper and Mr. Brown?—This is Page 104——

“A. Well, you mean in my own mind?

“Q. Yes.

“A. Well, I considered myself this way, Mr. Dezendorf, I might answer your question this way, that if we didn't take any income in down there I wouldn't get any money. I mean I devoted myself to his work and he devoted himself to my work, and if there was any lack of income I was [150] certainly trying to—it was certainly going to result in my disfavor, in that I wouldn't have that money to——,” Then he interrupted,

“Q. You mentioned a firm name, did you not?

“A. Yes.”

The Court (Fee, J.): That runs over onto the next page:

“Q. Well, did you ever consider yourself a special or limited partner with Mr. Klepper and Mr. Brown?

“A. Well, you mean in my own mind?

“Q. Yes.

“A. Well, I considered myself this way,”——

Mr. Green: That is on Page 105 you are reading from?

The Court (Fee, J.): Yes.

Mr. Green: Yes, I just read that. The point that we make of this, your Honor, is that this allegation in Paragraph V, United States vs. Costello, occurred right before Mr. Brown went into the office and before the assumed name certificate was filed and before this situation arose, and this finding here would infer that all this happened subsequent to the time that Mr. Brown was at the office and subsequent to the time they filed the assumed name certificate, and so forth.

The Court (Fee, J.): We will take that under advisement. My present idea is that Mr. Patterson did consider that he was a partner at all times. I will take that from the record, but I will take it under advisement. I can't presently place my hand [151] on something that I thought was in the record. I may be mistaken. I will take it under consideration.

Mr. Green: That is all, your Honor. That concludes my motion. Well, I have omitted one thing, your Honor, and I simply want to make it for the record, so that there will be no question that we have waived our objections. We made the general objection to the Conclusions of Law numbered I and III appearing on Page 5 of the Findings of Fact and Conclusions of Law "in their entirety, on the ground and for the reason that the said Findings of Fact do not substantiate or warrant or justify the conclusion of law that J. Robert Patterson was guilty of any unprofessional conduct or that he has shown such

flagrant disregard of the rules governing professional conduct that he should be disbarred permanently or at all or that his name should be stricken from the roll of attorneys entitled to practice in this court.”

Now, that matter has been considered before and I simply mention that so that we won't be considered as having waived any of our rights.

The Court (Fee, J.): No question about losing any rights, Mr. Green. This is not a technical proceeding. The only reason why I wished to have you come into court was on account of the fact that I wanted to be sure that we had fully understood your position. I have read your briefs, but I have never heard you argue this question orally, I am not sure that you want to argue it orally, but I have also heard suggestions that you were going to take an appeal and I wanted to be sure that we knew before we went ahead just what errors you think we have made in making these findings.

Now, I do not address myself to Mr. Patterson, because, after reading this record, I think that Mr. Patterson is afflicted with a moral myopia as far as his obligations to the bar and the Court are concerned, I think that he has no respect for the Court, I don't think he has any respect for the Judge, and I think this record shows it clearly,—

Mr. Green: I didn't hear that.

The Court (Fee, J.): I say, and I think this record shows it clearly; but I have known you for a long time, Mr. Green, you have an excellent reputation at the bar of this state, and I

think the bar ought to wash its linen in private in as far as it can, so I really want to know of you—I am not trying to stop you from taking an appeal or protecting your client's rights in any way that you want to, but I do want you to say as clearly as you may why you think this Court is not entitled to protect itself against the things that were done here by Mr. Patterson. I think if Mr. Patterson proceeds on the course that he has gone, with entire disregard to the ethical obligations of the profession, he is not only going to get himself into trouble, he is going to get a lot of other people into trouble, and that is why I think this Court is bound to accept the recommendations of the Committee, in order to protect itself. [153]

Now, there are some things that I think are not stressed in the findings, and I think that those should be incorporated in there. So far as I am concerned, I will not release this record until they are written in there.

For instance, I think that the gravamen of the charge in this case was that Mr. Patterson was a responsible official of the United States and of this Court, and that this Court would be entitled absolutely to rely upon the fact that he dealt with the judges, the attaches of the Court, and all persons who were in a position where they had to rely upon the Court for protection, with entire candor. I think that is where Mr. Patterson has made the mistakes which I think have brought him to the present pass. For instance, in the finding regarding Martin, I think

a salient factor—Now, this was discussed in the transcript—that one of the salient factors of that situation has been left out of the findings, namely, that Martin was an attache of the Court, in a way, one of the Court personnel, entitled to rely upon the Court for protection. He was a parolee. Now, even the charge does not contain the word “parolee.” I don’t think there was any question in anyone’s mind that that is what Mr. Patterson was contending, I think that is what marked a special class, but not only Martin himself, but the Judges of this Court, the probation officer that brought him to Patterson and the Court, were entitled to rely upon Mr. Patterson for something entirely different from what he did because he was a parolee. Now, if these people who are dependent upon this Court for protection are preyed upon by the responsible officials who are attached to the Court, then I think that this Court is in a situation where it could not operate with the confidence of the public.

Now, I think that that is the important feature of the charge and it is not expressed in the findings. Now, it must be expressed in the findings before we let the matter go.

Now, in the Costello case, looking at this from the situation of the Court, you know that I have the greatest respect in the world for this Court,—In fact, it has always had a reputation for honor and integrity on the part of its judges and on the part of the Court itself. Now, it is inconceivable to me that there is any defense to the conduct of a responsible officer of the Court who

brings in here a man who has been previously convicted in this Court, brings him before the bar of the Court and recommends him to some person, some other lawyer, to whom he stands in special relation,—I don't care whether that is partnership or what it is, it makes no difference in my mind—and then brings him up in court and, without telling the judge that is on the bench of this situation, has the judge accept the plea of Mr. Klepper, with whom Mr. Patterson stands in special relationship, and there is a fee paid by Costello or someone who is interested in him, because again the thing that I think must be written in some respect in the findings is What did [155] Costello think the money was being paid for, and I say to you that if Costello had been sentenced—And probably if he had come before he would have been sentenced to the penitentiary, because I had dealt with him before—If he had been sentenced under those circumstances he could have filed a writ of habeas corpus, asked for a writ of habeas corpus, and I think the Supreme Court of the United States, according to their tenor, would have granted it on the ground that he had been misled into entering a plea of guilty by a responsible official of the United States and officer of the Court, and I have no doubt that if that had been the situation Costello would have said that he thought some money went to the judge. As a matter of fact, in some proceeding, not of this record, I understand he did make some such statement, that he thought that the judge had been paid.

Now, that is the danger that I see in this situation and the reason that I believe that these findings have to be strengthened upon the line of stating some of the implications. I am not so sure if Mr. Patterson had not been appointed as an officer of the United States that we would have had to take so much interest in this situation, but here the judges are almost dependent upon the recommendations made by Assistant United States Attorneys. And I may say, having tried the Johnson case in Pennsylvania, that there the situation came about not by responsible officials but by sons of the defendant judge, and, while the jury exercised their prerogatives and did acquit Judge [156] Johnson, I may say that the record in that case did not show that any money went to Judge Johnson——

Mr. Green: I didn't hear.

The Court (Fee, J.): I say that the record in that case did not show that any money went to Judge Johnson, but there was a situation that is almost parallel with this, of maneuvers by the sons of Judge Johnson and the courts and people that were dealing with them, that the Judge had not been innocent. But the situation, to me, the build-up, was a situation that is entirely similar to this one that is before the Court.

Now, as I say, if you have anything in mind which would militate against that, or any other suggestion as to why these findings or this conclusion are in error, Mr. Green, I shall give you a very careful hearing on the subject, because I think that this Court is bound in each one of

these instances to enter a flat finding to the effect that Mr. Patterson acted willfully in disregard of the obligations that lay upon him as an official of the United States, and I must say that at the time we enter findings I would feel bound to write an opinion in which I set out something of the viewpoint that I have here expressed. As I say, I am going to give you full opportunity to rebut that if you wish, any argument on the subject that you wish, but I feel that it should be said, and say, that, as far as the Court is concerned, as far as I am concerned at least, the findings must be strengthened, before they are entered,—

Mr. Green: I didn't hear the last, your Honor.

The Court (Fee, J.): The findings must be strengthened, before they are entered, along the lines that I have suggested.

Mr. Green: Do you want to hear me now, your Honor?

The Court (Fee, J.): I have some people waiting for me, and if you will pardon me a moment, Mr. Green, I will go out, and then I will hear you.

Mr. Green: That is all right. It is only going to be a very short statement.

The Court (Fee, J.): All right, if you will excuse me.

(Judge Fee then left the bench and returned shortly thereafter, following which proceedings were had as follows:)

Mr. Green: Now, may it please the Court, I did not anticipate, when I came up here this morning, that there was going to be anything

before the Court other than our motion to amend the proposed findings of fact.

The Court (Fee, J.): I will give you time, if that is what you wish.

Mr. Green: I am quite anxious to have this matter concluded at an early date. We tried this matter on December 19th, and it leaves Mr. Patterson in a condition where he can't do anything. The findings were returned on June 28th, and it is now July 30th, and your Honor has indicated, at the time we had the appearance here before you in June, what your findings were going to be in [158] the ultimate analysis, so therefore I think so far as we are concerned, we can expedite the matter by having the matter before the appellate court, and this is the only thing I have to say with respect to what your Honor has said, and it requires me to relate some of the experiences I have had, because I was on the Grievance Committee of the Oregon State Bar Association for a number of years and was on the Trial Committee for a number of years and have gone through a number of these proceedings, and have prosecuted and have defended people charged with unethical conduct touching upon their qualifications to remain as members of the bar, and since I went over the situation at first—And I say this with all sincerity to your Honors—I haven't changed my mind from the first instance in this case that Bob Patterson was not doing a thing in which he was consciously aware that he was guilty of unethical conduct.

Now, let's take the Hughes case, which was the

passenger case. Now, he is charged with unethical conduct here because he knew that that would be a part of the defense, but if anybody can tell me what that law means at the present time, if any lawyer can tell me what that law means at the present time, I would like to know it, because I have searched, and we have a case on appeal to the United States Supreme Court now to finally determine that very question, and as I said to your Honor before, that if in the Caldarola case the majority of the Court had taken the position that the four members of the Court took that the *pro hac vice* [159] doctrine controls the contention made by Bob Patterson would be correct, except in one particular, and when we come down to a case where four members of the Supreme Court of the United States say one thing and five say another and they make a finding of guilty of unethical conduct on that ground, it seems to me it is stretching it quite far.

Hughes was a passenger and not an employee, and we say that during the war emergency a passenger had no right of action against anybody, because he waived his right, and the rules promulgated by the War Shipping Administration say that in as far as the state is concerned, so that you might know that we were going to urge that the United States of America would be a party defendant, and we relate these things sometimes to personal matters. I have had as many as 50 situations in the office in which passengers and employees were concerned, where the Government did not come in and make that contention, but

they came in and settled the cases, and we never know, from time to time, whether they are going to depend on the general agency agreement or on the basis of what Judge Frankfurth^{er} said in the Caldarola case. Just this week I read a case in the American Maritime Report where it says that the Government took over and made all investigations with respect to the defense and at the last moment, and before trial, they came in before a court in the East and tried to employ some other test so that they could be indemnified if they were held responsible. In other words, [160] even at this time, in 1948, there isn't anything so unsettled as a situation growing out of the General Agency Agreement of April 4, 1942. Just simply the General Agency Agreement has never been settled, and I don't know that it ever will be settled, and all the rules and regulations were made, and that is what he is charged with with respect to Hughes. So I never have been able to see it. I have tried to look at it from the particular standpoint, and I have never seen where there was any violation in what Bob Patterson did in that case, and I think from the very fact that he was asking for a judgment against the Alaska Steamship Company he was contesting the very statement that was made that the United States was responsible.

The record of the Court was that there was, however, negligence, and I think if a proper defense had been made in that case Judge McCulloch would have held that there was no liability to Hughes when he accepted transportation on

that basis. Now, you say, "How can he waive a tort?" During the war emergency there were many things that you can say,—“I accept transportation on this freight vessel at my own risk”—so I have never been able to see where there was any complaint that could be made against Bob Patterson for prosecuting the Hughes case.

With respect to Westley Bowden, all that I can say is that the Attorney-General's Manual says that he should not. The first charge made against Bob Patterson says that the Manual [161] says "shall not," and they now correct the finding and say "should not." Now, whether or not there was a conscious intent here, it seems to me—And I say this with all due respect to your Honor, but you have expressed your opinion with respect to the whole situation, you have called upon me to make a statement and possibly to express my opinion—I think that your Honor has brought into this many of the things that are not in the record,—many of the things that are not in the record. Now, with respect to the Bowden case, there wasn't any secrecy about it. It was discussed before and discussed afterwards and everybody knew about it. There isn't a single situation here where there was any element of secrecy about anything and where anybody was getting away with anything at all from the standpoint of gain or from the standpoint of professional gain in any particular situation, and the facts are admitted in practically every one of these situations. We do not come before this Court and say that Bob Patterson did not do this or did

not do that. We came before the Court and, I think, made as frank a presentation as we possibly could. I am not conscious of having held back a single situation in this case. Now, he might be subject to criticism, since he represented Bowden as his attorney in the divorce proceeding and then appeared over in the State court to defend him, and that was discussed with the District Attorney of this County and no advantage was taken of the fact that Patterson—It was never mentioned that he was an Assistant United States Attorney, so far as that trial was [162] concerned. The whole trial was conducted by Mr. Hicks, and Mr. Patterson did accept a part of the fees because he did do a part of the preparation and did sit during the trial of the case.

The records are full of situations where Assistant United States Attorneys and United States Attorneys have done that, and my recollection goes back, enough back, to know that there was one United States Attorney in this District who spent most of his time in his private office conducting his private business, and this Manual is not an express prohibition. In other words, there is a leeway there that is left, and I don't think that there is involved with respect to this question that he anticipated before the trial that he might be called as a witness. That might be a question where a man should take a reprimand, but not a disbarment.

The Court (Fee, J.): Well, I may say, as far as that question is concerned, when you left that out of the findings I left that out of considera-

tion. The fact that he might have anticipated that he was going to be called as a witness I think in this situation is entirely immaterial. I think the charge is that as Assistant United States Attorney he defended a first-degree murder case, or helped defend it.

Mr. Green: Well, if Bob Patterson is to be disbarred for that, all that I can say with respect to it, I am very frank to say that I am not familiar with all the practice, because I have never held a public office of any kind, until I got into the Manual, and there are many cases throughout the United States where United States Attorneys have engaged in private practice. Now, if you are going to permit that, it certainly in my mind is an entirely different situation.

Now your Martin matter: The charge is laid in here, your Honor,—I may be mistaken about this, because I haven't read the charge, but I know that Judge McColloch brought it up at the time of the trial of a parolee—but it isn't charged that this man took advantage of a parolee. We were never charged with that. This is the first time we have been met with that contention, and when I asked if that charge was going to be made—because it was something that was not in the original charge, and we would like to know and would like to have time to file a proper answer for it, because it was something new that had come into the situation, as I recall the record,—and I am only talking from memory now,—your Honor said, “We will proceed upon the charge as laid”—I think that was the statement, Judge Fee,

with respect to that Martin matter. And the Committee says—No, what we interpreted that to be, and the charge that was made was that he refused to represent this man. Now, it developed, what the facts were, that the United States Attorney's office had represented these people for a long time. It developed that that was wrong, that the United States was an adversary party in the situation, and it might be that he did wrong in saying, [164] "Well, what would the charge be?"—"Well, maybe a hundred and seventy-five dollars." I don't know whether it is wrong or whether it isn't wrong, because I am not too familiar with what the United States Attorney's office does with respect to their private practice.

Now, I make it very clear that so far as the parolee element is concerned we were never charged with attempting to take advantage of the parolee, unless upon the ultimate analysis of the thing. We never saw the man after that and we never did anything except to say, "If you don't get satisfaction and want to come back, come back and talk to us"—indiscreet, possibly, but certainly not that element that your Honor indicated here of a lack of morality that would refuse to permit a person to practice law.

Now, the Costello case: I have read the record in that, and that was tried before Judge McColloch, and it has been many years since I have defended a criminal case,—I don't know that I have since Judge Wolverton tried one on the Mann Act—I tried a case before Judge Wolverton back in the 1920s. Let me say this: Your Honor has

brought up the question that possibly Costello inferred—Or I think you made the statement that Costello had said that maybe the Judge had been approached in some manner. I got that inference from what your Honor just read in the record. Now, I submit, Judge Fee, that you can't premise a disbarment, and you shouldn't premise a disbarment, upon what somebody is going to say to some lawyer, and if you do that you are going to disbar 99 per cent of the lawyers in the State of Oregon. By that I simply mean this, that we are in a profession where it is very difficult to satisfy a hundred per cent of our clients at all times, and I don't care whether you charge them with crimes, possibly a civil matter. And I get cases in my office, statements which I, of course, know to be entirely untrue, and Jim Dezendorf undoubtedly gets reports, although when you are in corporate practice you probably don't get so many,—but **Jim Dezendorf** gets reports where they probably criticize him very severely, and so on, and, so far as I am concerned,—I know you made much of that—to me it just doesn't appeal; but if you are going to disbar anybody on that account, and disbar them forever, then you are going to have to say you take up the gossip of these people that are not satisfied with what you have done. Every time, with such a lawsuit in our office—not every time, but many times, I have heard fellows call up and say this person in my office—they criticize them most bitterly, and I call the lawyer in, and I know they have been properly represented, and try to appease them, and you

have to recognize the situation. But you can't follow a situation of that kind to its ultimate limits and say you are going to disbar a person on that account, and I don't care what Costello said, because I can take you to any number of criminals and they will tell you all kinds of cock-and-bull stories with respect to this, that and the other thing. But in [166] the Costello case the record shows that Judge McColloch asked Mr. Patterson, "Do you have any recommendation?" And he said no, and it was Mr. Klepper's statement,—It is all in the record, complete,—And it was based upon that that the man was given probation, not upon any recommendation that Bob Patterson gave.

Now, although Bob Patterson stated—And I think I indicated this in the record; I am not sure about this point—he might possibly have been subject to criticism when Costello's relatives or somebody asked him for the names of some lawyers, he gave them three or four names and among those was Mr. Klepper—Now, I think that Patterson should be criticized for it, but it isn't that type of conduct—although you can find myriads of cases in the books just like it—it isn't that type of conduct that shows that condition and mental situation that your Honor just talked about whereby a man should be disbarred, and I think when we come to the point, your Honor, of saying that by virtue of the fact that Costello—And I get it, from what has been said here, that he was at least a two-time loser, and maybe more, I don't know,—but you said you had him

before you, and I know he was before Judge McCulloch—When we get to the point where Costello or Joe Doakes gets up and says, “Well, Judge Fee was approached by my attorney and I therefore got a light break”—If you are going to disbar him you are not protecting the bar by doing that, you are condemning the bar and [167] putting them in a bad position, because these things are going to accrue and accrue and accrue, and you can’t depend upon matters of that kind for disbarment, and I think, if you take the record in the Costello case, that one thing that Patterson should have been criticized for, he put in the name of Klepper—If he had given the name of Green, or Ben Anderson, or four or five other fellows, I don’t think he would have been subject to any criticism, to go to any one of these lawyers, but he is subject to criticism because he gave the name of the man he was associated with. So I say criticism, but not disbarment.

Now, your last charge, that they filed the assumed name certificate under the name of Klepper, Brown & Patterson, is another situation, and all I can say, it is misjudgment on his part, probably didn’t give it a second thought. I don’t know who prepared the assumed name certificate. I think the record shows that Mr. Klepper prepared it. Very few lawyers do file assumed name certificates. I know that we never have in our partnership. Maybe we should, maybe we should be subject to disciplinary action for that reason, but the only thing that I say about it, there is no showing in this case that anybody was ever

injured, no showing of any misrepresentations. There is a showing that Patterson, so far as he could, did work for Klepper there in the office with him and took care of part of his business, which was the arrangement, and that what they anticipated was a partnership, which was finally consummated. [168]

Now, the canons, or the ethics, some of the rulings which were submitted to your Honor, and your Honor said you would take them in the matter of argument, some of those rulings that were submitted I am frank to tell you that I don't know where I would find them; I never have heard of them. Maybe I am pretty callous, maybe I have been at it for thirty-four years and just haven't learned anything, but I have watched a great many people come and go, and I have watched people who say that they are very, very ethical concerning matters, but I happen to know some things about them that convince me to the contrary, but I have never considered them a subject for disbarment, if you have to go to a canon or a ruling of the American Bar Association, that I challenge anybody it will take a long time to find, to determine that, and it has never been ruled upon in this state, in as far as I know, and to say that a man is going to be denied his livelihood the rest of his life on that account,—maybe a reprimand, maybe it should be something more serious than a reprimand, but certainly there should not be taken away the livelihood, because the test is what is in the person's mind and not what we can assume was in their minds that would

place them on the side of guilt, but what was in the person's mind that was an injury or a misrepresentation to anybody, and there isn't a scintilla in this record that there was any misrepresentation that was any injury to anybody.

So I say in all sincerity I think the statement that [169] your Honor made is not from the record and is not borne out by the record. I think the most that should be at this time dealt out to Bob Patterson would be disciplinary action of a minor nature, because we have said, and I think we have demonstrated through this whole proceeding, that there was not any objective on his part to color or to dodge or to switch around the corner in any particular. We simply came out and admitted practically everything that we have been charged with. I don't know of anything excepting—Well, I don't know of any particular thing of any great moment where there is any great disagreement in facts on this situation, and I urge upon the Court with all the power that I have that this man be subject to disciplinary action, he should be subject to a reprimand, he should be subject to possibly a minor disciplinary action, but not a disbarment, and I have been unable to find in the books—And we have searched carefully, I have searched and Mr. Patterson searched, and I had a search made by another person—and we have been unable to find any similar situation where the Courts in the final analysis have said in a situation of this kind it should be submitted to disbarment.

I want to make this statement to the Court,

because Mr. Mundorff, the Clerk of this Court, has indicated to me that this thing should be given to publicity after your Honors have signed the order,—And this comes to your Honors as a request, because I know I stand before you in that position—and that [170] is to state if you are going to disbar him it isn't the end of the trail, and I think this should be something to the effect that it is a finding of the Grievance Committee or the State Bar and that it is not the final finding in the situation, that there isn't any publicity about it. Of course, when it goes up to the Supreme Court then there will be publicity about it. I would request that the matter be not given out until the matter of appeal has been determined, although that can only come from me as a request.

And the other thing that I would urge upon your Honors is simply this, that whatever determination is made we would like to have it made at the earliest possible date, because it leaves Mr. Patterson in the position, has left him in the position since December 19th, 1947, where it is impossible for him to make any particular plans or do anything with respect to associating with anybody else. In other words, he is on the griddle every day. He has had many opportunities to associate with other people, or other people have wanted to come into his office, but he can't say "I will associate with you" or "I will go into your office," simply because he doesn't know what is going to happen in this situation.

Now, I think you have a perfect right to deter-

mine it, I am not questioning that, but I think you should, in all fairness to Mr. Patterson, determine it at an early date, because from December 19th it means that there has been substantially [171] more than eight months since we had this hearing, and during this time Mr. Patterson has been on the griddle, and I sincerely request, with all the earnestness I can command, that you do give Mr. Patterson a speedy determination on this and that the matter remain private until our appeal is in the Circuit Court of this Ninth Circuit.

The Court (Fee, J.): Well, the Judge appreciates the statement of your position. We really wanted sincerely to have that in the record, so that we could understand why it was that you did not believe these findings to be correct. But as to moving the case along, I agree with that, only with this suggestion, that it is admitted in this record that Mr. Patterson knew that this man was a parolee. Now, if you insist on trying that thing out I will have to set that down for retrial, because that is one of the facts that is in the record. I think it should be referred to in the findings. If you feel that that must be done and you must have more time, then I want to say that we would want to try that thing out, because I think it is a salient factor in Mr. Patterson's picture. It is in the record, I have read it, that he admitted that he was a parolee, he knew he was.

Mr. Green: I think that is true. I think Judge McCulloch made some statement, and he

pointed his finger at me and he said, "You had better be prepared to meet this, because this is a parolee," or something to that effect, and then I said, "If we are going to be faced with that, we should have the charge [172] laid," and then your Honor turned to Judge McColloch and had a few words with him and you said, "We will proceed with the charge as laid."

The Court (Fee, J.): That is right. I think that is correct. If you want some time to defend against that we will have to open it up and let you defend.

Mr. Green: Your Honor, I am more concerned with getting this matter determined. I am not going to ask for any more time. I am more concerned with getting this matter determined.

The Court (Fee, J.): All right, I tell you that I consider that one of the salient features in that particular incident and I am going to refer to it in my findings.

Mr. Green: I understand that.

The Court (Fee, J.): Now, as far as any suppression of publicity, I think that once this judgment is entered it must be of record in this Court before an appeal, I think that immediate publicity would follow. I don't think it could be suppressed. I don't see any way out of it.

Mr. Green: I made that request because I have known of situations in this Court where they have been reprimanded, and so forth, where there has not been any publicity upon that.

The Court (Fee, J.): Oh, yes, I think that is correct, but the situation of disbarring will go on the record of this Court, it has to be, as a judgment of this Court, and whenever it is entered here then I think that the cats are loose, I don't think [173] that anybody can do anything about it.

Mr. Green: Well, disciplinary action is a matter of record also and it is spread in the records of the Clerk's office. In other words, what I am saying is that I requested, and from the information I have received, that this same treatment be accorded to Mr. Patterson with respect to no publicity that has been accorded to other people that have been disbarred.

The Court (Fee, J.): So far as I know, there has never been a suppression of a judgment of disbarment.

Mr. Green: No, not of disbarment. I didn't say that. When I used the term "disciplinary action" I meant various and sundry types of action that are taken against persons for unethical conduct, whether it be disbarment, or reprimand or private reprimand or public reprimand. I meant to include all in my expression "disciplinary action."

The Court (Fee, J.): So far as I am concerned, since this Committee has been established, any action that has been taken has been, and will be, placed of record, with regard to anything.

If there is nothing more to be said, we will now recess.

Mr. Green: Just a moment. Do I understand, then, that there will be new findings served upon us?

The Court (Fee, J.): Yes.

Mr. Green: Some findings prepared by the Committee and served upon us?

The Court (Fee, J.): Yes, and I have no objection at that time to giving you a copy of the opinion that I intend to write.

Mr. Green: All right.

The Court (Fee, J.): And if you wish to have a hearing on that I will accord you that. I will give you a hearing on either the findings or the opinion.

Mr. Green: I do understand—The last time we were before the Court I asked your Honor this question—The status of Mr. Patterson before this Court is not changed until the order is made by the Court, is that correct?

The Court (Fee, J.): That is correct.

Mr. Green: That is correct?

The Court (Fee, J.): That is correct. I would say, in that regard, that I would disqualify myself if he appeared before me.

Mr. Green: Well, I understand that, but then our appeal time starts from the time that this action is——

The Court (Fee, J.): Yes, so far as appeal is concerned. I just want to make plain my personal

attitude. I will personally never hear another matter in which Mr. Patterson appears, because I am prejudiced against him, I am prejudiced on this record.

Court is in recess.

(Whereupon proceedings herein on this 30th day of July A. D. 1948, were concluded, and at 12:15 o'clock p. m. of said date the Court recessed.) [175]

REPORTER'S CERTIFICATE

I, Cloyd D. Rauch, a Court Reporter of the above-entitled Court, duly appointed and qualified, do hereby certify that on Friday, the 19th day of December, A.D. 1947, on Monday, the 28th day of June, A.D. 1948, and on Friday, the 30th day of July, A.D. 1948, I reported in shorthand certain proceedings had in the above-entitled matter before the Honorable James Alger Fee and the Honorable Claude McCulloch, Judges of the above-entitled Court, that I subsequently caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, pages numbered 1 to 175, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so taken by me in shorthand on said dates, as aforesaid, and of the whole thereof.

Dated this 10th day of August, A.D. 1948.

/s/ CLOYD D. RAUCH,

Court Reporter.

[Endorsed]: Filed Aug. 11, 1948. [176]

[Title of District Court and Cause.]

Portland, Oregon

Monday, Jan. 24, 1949, 1:30 o'clock p.m.

Before: Honorable Claude McColloch, Judge.

Appearances: Mr. James C. Dezendorf, representing the Standing Committee on Discipline to the Bar of the above-entitled Court. The Respondent, Mr. J. Robert Patterson, appearing in person and by his attorney, Mr. B. A. Green. Mr. Henry Hess, United States Attorney, and Mr. E. B. Twining, Assistant United States Attorney.

TRANSCRIPT OF PROCEEDINGS

The Court: I will hear you on your motion, Mr. Green.

Mr. Green: Your Honor, we filed our motion to amend the Findings of Fact as they were presented to us, and then we have filed objections to the Conclusions of Law.

I have very little to say with respect to the motion to amend the Findings of Fact. It pertains to this one sentence only, in Paragraph I, Findings of Fact, Page 2: "This Court was not aware of the relationship between Patterson and Klepper and between Patterson, Klepper and Brown until the same was brought to the attention of the Court by the complaint in this proceeding."

Then, again, in Paragraph II of the motion to amend the Findings of Fact, with reference to the following phrase appearing on Page 5 of the Find-

ings of Fact: "At the time of these occurrences the Court was unaware of the relationship between Patterson and Klepper and * * *"

I feel that these two statements indicate the Court was not aware of the relationship existing between Klepper, Brown and Patterson, although there were many pleadings before this Court where their names appeared on the papers, and the files that are here before this Court indicate that that relationship was apparent in all of these files. That is all I have to say with respect to that.

With respect to the general objections, or general objection—And it is a general objection which was overruled previously—since these are new Findings of Fact and new Conclusions of Law, we have objected to the Conclusions of Law Numbers 1, 2, 3, 4 and 5 and 6, appearing on Pages 5 and 6 of the Findings of Fact and Conclusions of Law, and object to them in their entirety, on the ground and for the reason that said Findings of Fact do not substantiate or warrant or justify said Conclusions of Law; and, also, that the record does not substantiate the Findings of Fact and Conclusions of Law.

That is the general statement we have made and the general objection that we have filed.

The Court: Mr. Green, the motion is denied and exception allowed. The objections are overruled and as to each and all exceptions are allowed.

I am signing the judgment of permanent disbarment based on the Findings of Fact and Conclusions of Law and the record, and the Clerk is

directed to enter the judgment and an exception is allowed.

Is there anything further? Enter the Findings, also.

Mr. Green: Is it my understanding, your Honor, these are being signed as of this date?

The Court: Mr. Green, I never get into any argument about the date of signing; I mean, the date that is put on the paper itself. Here is the judgment. I have just signed it. I am handing it to the Clerk now and he is directed to enter it. It is the first and only judgment that I have entered, and I don't know what date he will put on it. I imagine he will put today's date on it, though.

Mr. Green: Then, your Honor, may I ask this question? The Findings of Fact and Conclusions of Law, have they been signed?

The Court: The Clerk can answer that better than I can. He wants to know if the Findings of Fact and Conclusions of Law have been signed. Take them down there and show him.

Mr. Green: I don't know.

The Court: I don't know either. I think I know, but I do not know positively enough to answer your question.

Mr. Green: I see that they have been signed here. I am making inquiry, the same question. We will determine from the Clerk the date that is entered thereon. As I understand it, they had been filed prior to this time.

The Court: Before I went away, Mr. Green, in October, I signed some papers in this case. I was not sure enough, of my own recollection, to answer

some of the questions you have just been asking, prior to having seen the files. My recollection now is that I signed these Findings before I went away.

Mr. Green: Yes.

The Court: My recollection is that I also signed a brief opinion in the case before I went away. If these Findings and Conclusions have not yet been heretofore entered, I am now directing the Clerk to enter them as a basis for the judgment and decree which I have just now signed.

Mr. Green: Then, your Honor, is it proper for me to inquire: Will this be entered as of today? I inquire either of the Clerk or of your Honor. This will be entered as of this date, I assume.

The Court: Mr. Green, I never interfere with the actual dating of things by the Clerk. That is made his duty by the Rules, and I am directing that they be entered—Whether they have been heretofore entered I do not know. I don't know whether they have been heretofore entered. I have not examined the files closely enough.

Mr. Green: May I inquire, because that matter is of some importance from Mr. Patterson's standpoint—It is a secret record.

The Court: It won't be secret any longer.

Mr. Green: I understand, but it has been up to this date so, therefore, we have not been able to find out.

The Court: I think the record has been open to you, Mr. Green.

Mr. Green: Well, I appreciate that, your Honor, but the only thing I am trying to find out is whether or not they have heretofore been entered.

The Court: I don't know.

The Clerk: No.

The Court: Never have been entered heretofore.

The Clerk: I will now enter them and date them today.

Mr. Green: That is all I want to know.

REPORTER'S CERTIFICATE

I, Ira G. Holcomb, Official Reporter of the above-entitled Court, do hereby certify that I reported in shorthand the proceedings had in the above-entitled matter on January 24, 1949, and that the foregoing transcript, pages numbered 1 to 5, both inclusive, constitutes a full, true and accurate transcript of said proceedings so taken by me on said date, as aforesaid, and of the whole thereof.

Dated this 1st day of February, A.D. 1949.

/s/ IRA G. HOLCOMB,
Court Reporter.

[Endorsed]: Filed Feb. 1, 1949.

[Endorsed]: No. 12175. United States Court of Appeals for the Ninth Circuit. In re J. Robert Patterson; J. Robert Patterson, Appellant, vs. The Standing Committee on Discipline to the Bar of the United States District Court for the District of Oregon, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed February 7, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 12175

In Re J. Robert Patterson

STATEMENT OF POINTS ON APPEAL

The appellant respectfully submits the following statement of points on which the appellant intends to rely on appeal:

I.

The District Court erred in entering its Findings of Fact and Conclusions of Law and Judgment of Permanent Disbarment against the appellant, for the reason that the evidence is insufficient to justify or support the said Findings of Fact, Conclusions of Law and the Judgment.

/s/ B. A. GREEN,

Attorney for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Feb. 17, 1949.

In the District Court of the United States
for the District of Oregon

In Re J. ROBERT PATTERSON.

James Alger Fee, District Judge.

OPINION

The respondent, J. Robert Patterson, has been charged with several deviations from ethical standards as an attorney of this court and as an official of the United States, as Assistant United States Attorney.

The matter was referred by the court to the standing committee of discipline of the bar of this court, a group of lawyers of high standing in active practice who were designated and had functioned in other matters before the incidents hereinafter considered arose.¹ After an investigation, these brought charges against respondent, who then appeared personally and by attorney at several noticed hearings before the court, sitting behind closed doors, in order that no shade should fall upon respondent if the charges proved unfounded. Testimony was taken before the judges. The committee was then asked for a recommendation. The answer by the bar committee was a proposal for disbarment. The court accepted this recommendation, and ordered findings to be prepared. There was objection by Patterson to the findings originally submitted. Upon this suggestion, coupled with an intimation of appeal, the court asked counsel for Pat-

¹ David Lloyd Davies, Samuel H. Martin, Robert A. Leahy and James C. Dezendorf.

terson to state into the record all grounds upon which he believes there might be error. These matters were fully discussed at the hearing, where a member of the bar committee, respondent, his counsel and the judges were present. The reason for all this precaution is that the judges believe the bar should apply its own discipline. Likewise, since all previous proceedings had been secret, it was decided to fully canvass the situation before any record damaging to respondent be made public.

The bar of the federal court of the District of Oregon has always had extremely high ethical standards. The judges in the past have felt secure when one of the members of that bar made representation that action could be taken thereon without further investigation.

There are four excuses suggested for respondent. It is said that no one was harmed by what he did. It is also urged that Patterson did not violate any law or enforceable regulation, but only ethical standards. The contention is then made that respondent acted in ignorance of the fact that his conduct was unethical. Finally, he should not be stricken from the roll, but simply admonished because of the momentous consequences to a young men at the opening of a career. But the answers to these suggestions are plain. First, if moral unfitness to practice law be demonstrated, the court may protect itself from scandal and contempt, even though none of its suitors be injured, and even though the acts occurred in other courts or the delinquency was made patent in a private as dis-

tinguished from a professional capacity. Second, courts have not awaited conviction of crime before purging the roll of one shown afflicted by moral myopia. *Ex parte Wall*, 107 U. S. 265. Third, although the power should only be exercised in judicial calm, the court should strike one clearly shown to have acted so "as to be unworthy of the trust and confidence involved in his official oath,"² even though respondent was blind to the dereliction involved. Finally, the purpose of the proceedings is not punishment of respondent, but protection of the public litigants and wards of court and the efficiency of the judiciary as an instrumentality of justice. Sympathy for an erring member of our bar cannot weigh in the balance.

Therefore, the exercise of sound judicial discretion compels us to perform a distasteful duty in order to protect the integrity of the bar. The recommendation of the standing committee of lawyers, appointed long before these incidents had come to light, weighs heavily with us. Even if the bar had been adverse to disbarment, the record of respondent would compel drastic action.

The arguments of counsel for respondent set forth above overlook the cardinal fact that Patterson was not only an officer of the court, but an official of the United States. He, as such official, was not only unfaithful and disloyal to his client, the Government of the United States, but he was derelict in his duty to the court, not in respect to the judges personally, but through abuse of inter-

² Thornton, *Attorneys at law*, Vol. 2, p. 1187.

ests of those who, as wards, were committed to him as an officer of the court and of the United States.

There are four incidents which prove this indictment.

First, Patterson, while Assistant United States Attorney, defended a person charged in the state court with first degree murder. His official capacity was given wide publicity at the time of the trial. This conduct was contrary to the regulations laid down by the Attorney General of the United States, which were binding upon respondent as an official. The action was likewise against the ethical principles of lawyers. The public likewise were gravely offended that one whose chief duty it is to prosecute offenders appeared as a defender in a homicide case. Patterson says he did not know of the regulation, as though that were an answer. This incident is only an indication of betrayals of deeper consequence.

While Assistant United States Attorney, respondent brought an action for Hughes, a passenger on a ship operated by the Alaska Steamship Company, in the interests of the United States. Patterson made the steamship company sole defendant. But he knew that his client, the United States, would be morally and in certain events legally liable to pay any judgment which might be recovered. A great deal of argument has been wasted in proving the sound view at the time this suit was brought was that the United States was

not technically liable.³ Today it is admitted that the Government is making arrangements administratively to bear the burden of such recoveries. One of the reasons Patterson is not competent to practice law is that he is impervious to the suggestion that it was his sworn duty to refuse any case which might by remote possibility infringe on the interests of the United States. The interests of the Government cover the seven seas, and, if a Government official cannot be trusted to protect them, then he certainly cannot be expected to protect the interests of private suitors who seek his advice. A man cannot serve two masters. Since the duty of Patterson was primarily to the Government, he was incompetent to advise Hughes impartially whether to sue the Alaska Steamship Company or the United States or both. This persistent blindness to his obligations seems congenital.

The next charge is that Patterson, as Assistant United States Attorney, had turned over to him a parolee who was in charge of the Probation Officer, another official directly responsible to this court. The parolee had been a seaman. There had been money deposited in the registry of the court in San Francisco to which the seaman felt he was entitled. Patterson offered, as a private attorney, to attempt

³ At the time Patterson filed this action, the Supreme Court of Oregon had held in *Hust vs. Moore-McCormack Lines*, 176 Ore. 662, that the only remedy of a seaman under such circumstances was suit against the United States. Although this case was subsequently reversed by the Supreme Court of the United States, the law is still far from clarified.

to recover the money for a fee of \$175.00. Nothing further was done by the seaman, so there were no consequences and no one was hurt, according to the theory of respondent.

The argument has largely concerned itself with the question of whether it was the duty of the Assistant United States Attorney to represent a seaman or the Government in such matters. But here again the position of Patterson has the same vice noted in the incidents just considered. If his duty was to the United States, he should not have represented the seaman at all. If it was his duty to represent the seaman as a ward of the court, he had no right to bargain for a fee for his services. But Patterson was dealing with a parolee,⁴ sent to him by a fellow officer of the United States for advice.

The unethical nature of Patterson's conduct in this transaction is apparent. The courts cannot function if their wards or those dependent upon them for protection are considered legitimate objects for prey by their officers. A parolee is at the mercy of the Probation Officer and the United States Attorney and his assistants. If their directions are not obeyed, a case could be made to send the parolee back to prison. The idea of making a charge for legal services to such a ward under such circumstances is entirely repugnant to the ethical

⁴ Technical objection was made to a consideration of this fact which the record shows was known to Patterson, but the offer of the court to open proceedings was refused. The confidential file of the Probation Officer, although not taken into consideration here, is available to attach to the record.

concepts. Thereby, Patterson violated his official duty to the United States and a duty to the ward of the court.

Finally, Patterson was required to prosecute one Costello. Upon request, he recommended Klepper, his partner, to Costello as an attorney. Costello hired Klepper, eventually paying him a fee. Patterson did not withdraw as prosecuting officer and have the case assigned to another Assistant United States Attorney. Patterson, Klepper and Costello came before the court. Patterson related the story of the violation as Assistant United States Attorney. Klepper told of the mitigating circumstances relating to this recidivist, and asked for probation for him. The judge asked Patterson for a recommendation, and the latter replied that he had none to make, but did not suggest that the refusal was based on the fact that Costello was represented by his own associate. Upon his plea, which Patterson did not oppose, the judge granted the request.

The parolees, probationers and defendants charged with crime are under the protection of the court, its judges, probation officers and also of the prosecuting and investigating officers of the United States. This protection, always present in theory since the adoption of the first ten amendments to the Federal Constitution, has been given hardening reality by recent opinions of the Supreme Court of the United States and other federal courts. Trial judges, whether willing or no, have been required to scrupulously protect the rights of defendants brought before them. Where those in an official

capacity have misled or oppressed a defendant without knowledge or possibility of knowledge by the judge, the result has been the same.

A conviction has been set aside where the trial judge failed to appoint different lawyers for two defendants whose interests were opposed.⁵ Here it is true the Assistant United States Attorney and his associate obtained a disposition of the cause for a fee to the associate which accorded with the wishes of the defendant. But if defendant had been committed to a penitentiary or had been dissatisfied with either the sentence or the fee charged, an unassailable basis for release on habeas corpus was presented.

In *Whaley vs. Johnson*, 316 U. S. 101, it was laid down that threats and intimidation practiced by an officer of the Federal Bureau of Investigation, coercing a defendant to plead guilty, would be sufficient basis for setting aside pleas and sentence, although the matter had never been brought to the notice of the sentencing judge. It is true *Costello* has never complained of his sentence, a circumstance which might indicate that he got what he paid for and that only society and the United States suffered. But if he had sought relief from the sentence, the Supreme Court could scarcely have denied it if the facts here admitted were shown.

This point is further illustrated with specific regard to an Assistant United States Attorney in *Walker vs. Johnson*, 312 U. S. 275, 286, where it was held that, even in the absence of knowledge of

⁵ *Glasser vs. U. S.*, 315 U. S. 60, 75, 76.

the sentencing judge, a defendant would be entitled to habeas corpus "if he was deceived⁶ or coerced by the prosecutor into entering a guilty plea," since thereby "he was deprived of a constitutional right."

In *Michener vs. Johnson*, 141 F. 2d 171, on habeas corpus, where the trial court found on the basis of depositions of a treasury agent and an Assistant United States Attorney that defendant had voluntarily waived counsel, although nothing was called to the attention of the trial judge, the Court of Appeals of the Ninth Circuit remanded the cause to take testimony as to whether these officials had concealed from defendant the fact that he was entitled to counsel on arraignment, and that there were two counts of the indictment.

The effect of legal advice given only by agents and officials of the Government is illustrated by a few excerpts from the case of *Von Moltke vs. Gillies*, 332 U. S. 708, 725:

"Before pleading guilty this petitioner undoubtedly received advice and counsel about the indictment against her, the legal questions involved in a trial under it, and many other matters concerning her case. This counsel came solely from government representatives, some of whom were lawyers. The record shows that these representatives were uniformly courteous to her * * * she appears to have developed great confidence in them * * *.

"The Constitution does not contemplate that prisoners shall be dependent upon government

⁶ Emphasis ours.

agents for legal counsel and aid, however conscientious and able those agents may be.”

The position of a prosecuting officer for the United States is one of great power and influence and the actions of the holder of the office to a large extent are not under scrutiny of the court. Therefore, it is subject to great abuses if held by the untrustworthy or unstable.

The integrity and freedom from suspicion of prosecuting officials and judges are justly bracketed as requiring the respect and support of the courts and their officials by members of the bar by Stephens, Associate Justice, concurring in *Duke vs. Committee on Grievances of the Supreme Court of the District of Columbia*, 82 F. 2d 890, 896.

An able Federal Judge, Mac Swinford, disbarred a state prosecutor from practice in the United States District Court of the Eastern District of Kentucky, because he failed to perform his sworn duty to prosecute violators of state laws. In the course of the opinion,⁷ there was quoted an excerpt from *State vs. Hays*, 64 W. Va. 45, which is particularly apt here:

“No one will deny the power and duty of a court to strike from the roll the name of one who fails to maintain fidelity to the personal trust of a single client’s interest. How much more important is the duty to exercise this power when the infidelity or misconduct relates to an attorney charged not only by the honor and oath of an attorney at the bar, but also by the dignity and oath of a pub-

⁷ *Wilbur vs. Howard*, 70 F. Supp. 930, 936.

lic official, in an office calling for the exercise of highest qualities as an attorney! * * * It is impossible to say that what one does as prosecuting attorney is not done as an attorney. It is done in his professional relation to the people, as well as in his official relation. * * * ”

There are paramount duties imposed upon lawyers who are admitted to the bar of a court. One of these is absolute loyalty to the interests of a client. Another, equally important, is that the lawyer must, without regard to any consideration personal to himself, guard the interests of the defenseless and oppressed. The record is clear. Patterson did not respect either of these obligations.

He still does not understand the nature or magnitude of his derelictions. He has prevailed upon a prominent lawyer of this bar, apparently by appeal to the obligations of members of the bar to their fellows and to the profession, to urge a minor penalty. But neither the loyalty of his chosen counsel nor sympathy which we have for an erring member of our profession can prevail in the face of the record.

It is with sorrow that the writer records the fact that, although he had no personal knowledge of the matters except through the record and these proceedings, the writer could feel disqualified to hear a case in which Patterson appeared as counsel because the matters of record are so prejudicial to Patterson that the writer would be unable to have confidence in any representations or contentions made by him.

It is well known that the federal bar is not as well knit and as homogeneous as the bar of the states and localities. Discipline in the federal courts is extremely difficult of administration because the judges do not have the intimate contact with the lawyers who practice before them. The integrity of the federal trial courts has been based upon the respect given them by the bar. If this fails, the courts fail. It is true, judges are products of a hardy climate, but they should not have to fear attacks from behind by traitors to the high ideals of the profession.

The findings and decree of disbarment will be entered.

McColloch (District Judge).

The thing about this case that has always impressed me the most is the incident about the parolee. It is absolutely not to be tolerated that any officer of the court shall take personal advantage of the acquaintance which his official position gives him with probationers and parolees; and exploitation of them comes worst from a member of the staff of the United States Attorney.

/s/ CLAUDE McCOLLOCH.

[Endorsed]: Filed March 10, 1949. Lowell Mundorff, Clerk.

[Endorsed]: Filed March 12, 1949. Paul P. O'Brien, Clerk.